

# EVALUATION OF THE EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION)



February 2022

# **EVALUATION OF THE EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION)**

Final report

14 February 2022

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# Glossary of terms

| List of acronyms                    | Full name and/ or description   |
|-------------------------------------|---|
| CDE                                 | Council for Democratic Elections  |
| CEC                                 | Central Electoral Commission  |
| CODICES database                    | Database on Constitutional case law of the Venice Commission  |
| Congress                            | Congress of Local and Regional Authorities of the Council of Europe   |
| CSES                                | The Company Centre for Strategy & Evaluation Services   |
| “The Court” or “the European Court” | European Court of Human Rights  |
| DC                                  | Department of Communications  |
| DHR                                 | Directorate of Human Resources  |
| DGI                                 | Directorate General of Human Rights and Rule of Law   |
| DGII                                | Directorate General of Democracy  |
| DIO                                 | Directorate of Internal Oversight   |
| EOM                                 | Electoral Observation Missions  |
| EU                                  | European Union  |
| GRECO                               | Group of States against Corruption  |
| IMF                                 | International Monetary Fund   |
| JPs                                 | Joint Programmes  |
| OAS                                 | Organisation of American States   |
| ODGP                                | Office of the Directorate General of Programmes   |
| ODIHR                               | Office for Democratic Institutions and Human Rights   |
| OECD                                | Organisation for Economic Co-operation and Development  |
| OSCE                                | Organization for Security and Co-operation in Europe  |
| MoU                                 | Memorandum of Understanding   |
| NGO                                 | Non-governmental organisation   |
| QRM                                 | Quick Response Mechanism  |
| PACE                                | Parliamentary Assembly of the Council of Europe   |
| PGG                                 | Partnership for Good Governance   |
| P&B                                 | Programme and Budget  |
| PMM                                 | Council of Europe Project Management Methodology  |
| SP                                  | South Programme   |
| ToC                                 | Theory of change  |
| VOTA Database                       | Database on electoral legislation, constitutional provisions and Venice Commission documents in the electoral field |





# Executive summary

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**T**his executive summary contains the main conclusions and recommendations of the Evaluation of the European Commission for Democracy through Law (Venice Commission) commissioned by the Directorate of Internal Oversight (DIO) of the Council of Europe and carried out by the Centre for Strategy & Evaluation Services (CSES) during the second half of 2021.

## 1. Resume – Objectives and scope

The purpose of the evaluation was to assess the extent to which the Venice Commission has and continues to achieve its objectives. The more specific aims were to evaluate:

- ▶ the extent to which the work of the Venice Commission is relevant to its various stakeholders;
- ▶ how effective the Venice Commission has been in achieving the objectives and expected results as outlined in the Programme and Budget documents 2016-21;
- ▶ how efficient the Venice Commission has been in implementing its programme of activity;
- ▶ the impacts that the Venice Commission has contributed to respectively at the Council of Europe and member state level since it was founded 30 years ago.

The DIO's terms of reference included an evaluation matrix setting out more specific issues relating to the evaluation criteria (relevance, effectiveness, efficiency and impacts), possible performance indicators and other information. This was supported by a "theory of change" and a suggested methodological approach.

The purpose of the evaluation is to contribute to the Council of Europe's efforts in exploring and optimising the Venice Commission's work, to enhance the coherence and synergy of actions, as well as to highlight the impact of the Venice Commission since its establishment in 1990. In terms of scope, the evaluation covered the 30 years since the foundation of the Venice Commission but with a focus on the period 2016-20. The terms of reference stipulated that all the Venice Commission's activities should be covered by the evaluation – the opinions, standards, reports and guidelines, etc. In relation to the Venice Commission's impacts, the primary focus is on the rule of law in member states – ensuring the democratic functioning of institutions, respect for fundamental rights, and constitutional justice and electoral reform.

## 2. Overall conclusions

**The Venice Commission is a highly regarded institution that plays an important role in the international field through its activities to promote democratic values and the rule of law.** Throughout its 30 years of existence, it has provided legal advice and assistance that is perceived as relevant, valuable and timely to member states, often in challenging and fast-moving circumstances. By doing so, it has established itself as an independent and widely respected international authority in the field of constitutional justice and the rule of law, recognised by international organisations, Council of Europe bodies and member states alike as an important reference point. In highly politicised situations, the Venice Commission's recommendations have sometimes been controversial with only limited implementation taking place. However, even in these situations, the Venice Commission recommendations have often been perceived by non-governmental stakeholders as important.

**The important role of the Venice Commission as an independent consultative body is widely recognised, in Europe and, increasingly, further afield.** Direct impacts attributable to the Venice Commission over time are difficult to measure because many factors can influence changes in member states, and no systematic internal monitoring is undertaken to check whether recommendations are implemented. However, there is a general consensus on the role of the Venice Commission as one of the main authorities in the field of human rights, democracy and the rule of law, setting the standards for others to follow.

**While its modus operandi is fundamentally sound, there are ways in which the Venice Commission's efficiency and effectiveness could be enhanced.** With increasing demand for Venice Commission opinions, especially in recent years, but quite limited resources, the sustainability of the Venice Commission's operations on the current basis is likely to be compromised in the near future. There are also other actions that could be taken to improve the transparency of Venice Commission working methods and procedures and to help maximise impacts.

### 3. Specific conclusions and recommendations

The more specific conclusions of the evaluation are summarised below under the headings of relevance, effectiveness, efficiency and impacts. Recommendations are made where appropriate.

#### 3.1 Relevance

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**Alongside other parts of the Council of Europe, the Venice Commission has become an important element in the international legal order.** It provides legal and technical expertise, to a large extent on-demand, in the form of opinions and other “constitutional aid” to its member states in line with the Council of Europe’s overall mission. The Venice Commission’s relevance stems from its capacity to provide high-quality timely and impartial assistance to member states and other authorities on complex legal issues. Over time, the Venice Commission has adapted its areas of work and responded flexibly to member states’ needs and the changing circumstances in the international order generally. While this has meant its activities have remained highly relevant, it also suggests that the Venice Commission should provide an updated overview of the scope and core areas of its work for additional clarity. In addition, the Venice Commission could review its rules of procedure to ensure that they still provide an appropriate framework for its current needs.

**Recommendation 1: The Venice Commission should provide a detailed overview of the scope and core areas of its work for additional clarity and review its rules of procedure in light of current challenges and demands.** After 30 years, a review of the Venice Commission’s rules of procedure would be justified to ensure that it is “future-proofed” and remains relevant in light of the expanded membership and changing circumstances. An updated and clear overview of its areas of work could help to prioritise the Venice Commission’s activities, in particular the increasing demands for (urgent) opinions. This would also help member states’ understanding of the situations in which they can engage the Venice Commission’s expertise.

**As part of its goal to promote the rule of law and democracy, the Venice Commission’s activities have been very relevant to developing European standards and principles.** By doing so, the Venice Commission has encouraged member states to bring their legal systems into line with international standards, for example by issuing documents setting out international standards such as codes of good practice, guidelines and checklists. There is room to further develop this role by preparing additional compilations (for example, in the form of thematic publications) which provide overviews of key principles and, at the same time, help ensure consistency in the way these standards are applied across member states.

**Recommendation 2: To enhance the Venice Commission’s relevance, additional compilation(s) of European standards should be prepared in certain thematic areas to reinforce the guidance on international principles available to member states on the rule of law and democracy.** Compilations of international standards in different thematic areas developed by the Venice Commission in collaboration with other Council of Europe bodies and partners, such as the Organization for Security and Co-operation in Europe/ Office for Democratic Institutions and Human Rights (OSCE/ODIHR), would provide additional clarity on key international principles. By consolidating international principles on a broader scale, the Venice Commission would further strengthen its relevance and its position as a leading source of legal expertise for member states on the issues they face.

#### 3.2 Effectiveness

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**Feedback from the research indicates that the Venice Commission has been effective in achieving its objectives as set out in the Programme and Budget documents.** More specifically, in terms of achievement of the “expected results” targets set out in the Council of Europe’s Programme and Budget, as a measurement of the Venice Commission’s effectiveness, it can be stated that there has been consistent good overall performance over the past five years across all three “expected results” categories. The Covid-19 pandemic constituted a major challenge in 2020-21 that did not, however, prevent the Venice Commission from remaining on course to achieve the 2020-2021 targets.

**Beyond the “expected results” output measures, the findings are less clear with regard to the intermediate outcome as set out in the Venice Commission’s Theory of Change: “National authorities adopt, amend and implement their constitutions and legislation in compliance with the Common Constitutional Heritage as recommended by the Venice Commission”.** This is reflected in both the Venice Commission’s own progress review reports and the feedback from the interviews and survey work for this evaluation. The report examines the factors influencing Venice Commission outcomes, whether positively or negatively. The most important factors that are within its control include the Venice Commission’s capacity to deliver high-quality outputs in a timely manner and the way the Venice Commission engages with national authorities through flexible

“constructive dialogue”. However, the extent to which the Venice Commission can influence intermediate outcomes is limited and depends also on the actions taken by the member states. Ultimately, it is the political willingness of national authorities to accept and implement the Venice Commission’s recommendations that is decisive for the Venice Commission’s work to translate into actual changes in legislation and legal reforms. It is also the case that changes in member states depend on a variety of factors and not just the Venice Commission’s recommendations.

**The Venice Commission engages with a wide range of national and international partners in carrying out its work but there is scope to formalise this in relation to some entities.** The involvement of the European Union (EU) and international organisations such as the International Monetary Fund (IMF) further gives the Venice Commission leverage as its opinions are often linked to EU accession negotiations and/or financial assistance programmes. Indeed, the Venice Commission is most effective when the wider political context creates the conditions for successful implementation. A more substantial role could also be given to civil society organisations so that they can also contribute their expertise to support the Venice Commission’s work and thereby add to its effectiveness. This could be done via the field offices and could, for example, take the form of joint events related and unrelated to opinions.

**Recommendation 3: The Venice Commission should develop channels for closer joint working with civil society organisations and legal associations in member states on opinions and other Venice Commission activities, possibly via the field offices.** Civil society organisations and legal associations involved in the Venice Commission’s areas of work have much to contribute in terms of their legal and political knowledge and insight to the situation in countries. Therefore, the Venice Commission should develop and systematise the channels through which these entities can, as and when relevant, provide inputs, for example regarding the legal and political developments in a country in the context of issuing an opinion. A broader societal engagement of this sort would enable the Venice Commission to adopt a more holistic stance in relation to issues it is asked to consider in member states.

**Although Venice Commission external communications have improved, there is scope to further develop this aspect of its activities.** Improved and better focused internal and external communication could help, on the one hand, to strengthen the co-ordination and co-operation with other Council of Europe bodies and, on the other hand, to increase the visibility of the Venice Commission more widely. Internally, additional structured communication channels could help promote the sharing of expertise with other Council of Europe bodies, maximise joint outputs and make it easier to exploit synergies. Externally, the media coverage and visibility of the Venice Commission varies across member states and is greater in those countries where a larger number of opinions have been issued. The dissemination of Venice Commission opinions through the Council of Europe’s Communication Services is regarded as working well. However, this role could be further developed.

**Recommendation 4(a): Communication with other Council of Europe bodies should be strengthened to facilitate co-ordinated efforts.** Increasing formal communication channels between the Venice Commission and other Council of Europe bodies could help strengthen co-operation and further embed the Venice Commission in the wider Council of Europe structure. Joint opinions with other Council of Europe bodies could be replicated in other thematic areas, especially where the Council of Europe has expertise to add.

**Recommendation 4(b): The Venice Commission’s external communication should be further developed in co-operation with the Council of Europe Directorate of Communications so as to increase the visibility of the work done across countries and with the wider public.** A greater effort could be made to publicise the Venice Commission’s activities and communicate the outcomes more widely, for which additional resources would be needed. Efforts to streamline the external communication could include drafting a communication strategy, providing additional publicity to the already existing Venice Commission quarterly newsletter or approving press releases on individual opinions more quickly to allow the media to report on them in a timely manner. The selective approach towards issuing press releases only for the more technical and sensitive opinions is considered to work well. However, clearer timelines for publication of adopted opinions after the plenary sessions would help journalists to better plan their coverage of the Venice Commission’s work. In addition, the Venice Commission website could benefit from an update to make it more user-friendly and easier to navigate.

### 3.3 Efficiency

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The research carried out for this evaluation suggests that the Venice Commission operates very efficiently and despite having only modest financial and human resources, performs to a high standard. However, additional resources will be needed to ensure the sustainability of its operations in the future. The Venice

Commission faces pressure to continue delivering high-quality outputs, especially in the form of urgent opinions, particularly given the ongoing constraints on its financial and human resources. In addition to the role of the Venice Commission members, the Secretariat plays a crucial role in ensuring that it fulfils its mission. However, the analysis suggests that if demand for its services continues to increase, and if the Venice Commission is to operate on a sustainable basis and maintain the quality of its opinions, its human resources will need to be increased. Indeed, an increase in human resources will not only be crucial for the sustainability of its operations but to further facilitate the implementation of the recommendations provided in this evaluation. As for the constraints on financial resources, these could be at least partially addressed through voluntary contributions, which constitute a clearly defined channel through which the Venice Commission can receive additional financial support from member states.

**Recommendation 5: The Venice Commission's human resources should be increased to ensure the sustainability of its operations in the future.** An increase in human resources in line with the continuing increase in workload would allow the Venice Commission to continue its high-quality work in all its fields of expertise and across its different type of activities without compromising quality. It would relieve some of the pressure on the Venice Commission Secretariat and allow for other activities, such as events (conferences, seminars), to take place on a larger scale to support opinions. An increase in resources would further support the implementation of the recommendations resulting from this evaluation. This is a decision that would need to be taken by the Committee of Ministers in the context of the next Programme and Budget review.

As for the Venice Commission technical assistance projects, these provide a framework to develop trust and a close co-operation with national authorities, which further contribute to creating the positive conditions for the implementation of Venice Commission recommendations. In addition, they allow for a targeted assistance to the country at stake. The implementation of projects could benefit from being supported more closely by the wider Council of Europe organisation or by additional resources in the field. This would allow for the Venice Commission to maximise its strongest assets, which is its ability to issue quick legal opinions through the Quick Response Mechanism (QRM). The Council of Europe Project Management Methodology (PMM) could also be further embedded in the Venice Commission technical assistance projects to bring projects more in line with Council of Europe working methods, including internal and external reporting.

**Recommendation 6: The management of international co-operation activities should be reviewed and technical assistance projects brought further in line with the Council of Europe Project Management Methodology.** Additional resources for project implementation in the field, either from the broader Council of Europe or the Venice Commission, would contribute to maximising the Venice Commission's key asset in the form of technical assistance, either through opinions or other types of targeted support. For example, co-operation projects could be more closely linked to reforms and changes in the legislation following Venice Commission opinions. In addition, this would allow for further reporting internally and externally to bring them in line with Council of Europe standards.

**The evaluation suggests that the criteria for individual members to serve on the Venice Commission might need to be adjusted to safeguard their independence and minimise potential political interference.** For that purpose, a similar process to that used by the European Court of Human Rights (the Court / the European Court) could be adopted to approve members. Another possibility would be to establish a body to review appointments.

**Recommendation 7: Revise the rules of procedure in respect of the process for the appointment of members to help ensure the highest standards of independence and technical knowledge.** This could further involve the creation of a Venice Commission panel responsible for reviewing the appointment of members, consisting of members of the Secretariat and/or of the Enlarged Bureau. Its role would be to review the nomination of Venice Commission members by the member states and provide an informal and confidential opinion on the suitability of the candidates. The existing criteria to be fulfilled by the potential Venice Commission members might have to be expanded to include, for example, the positions members can hold in their country of origin while being members of the Venice Commission, to safeguard the independence and neutrality of the Venice Commission and its individual members. It would clearly be important to safeguard the right of member states to take sovereign decisions and as such, they should continue to have the ultimate say in appointments.

**The Venice Commission operates in an efficient way, its flexibility being stressed by many as a strength that allows it to respond in an appropriate way to member states' needs. At the same time, the evidence suggests that there is room to formalise procedures with the aim of increasing transparency.** A number of possible improvements have been highlighted by the evaluation, including defining the mandates and establishing clearer election procedures for the Venice Commission President and Vice Presidents, increasing transparency in some other processes such as the selection of rapporteurs for opinions as well as additional

clarity in the decision-making procedure for (urgent) opinions. More clarity and transparency would not only further enhance the legitimacy of the Venice Commission's activities but might also increase the engagement of some of its members and reassure others that appropriate rules and procedures are in place.

**Incorporating some of the working practices that have proved successful during the Covid-19 pandemic in the longer term could enhance the Venice Commission's efficient way of working.** The increasing use of digital communication methods (for example, more virtual meetings in between plenary sessions) would save costs and could facilitate the participation of members from faraway countries. Besides, a more inclusive approach to the work of the Venice Commission's sub-commission and the wider use of Council of Europe languages would increase the active participation of those Venice Commission members not comfortable using English as the primary working language.

**Recommendation 8: Review the working methods of the Venice Commission to formalise certain processes and procedures to ensure greater clarity and transparency while retaining a sufficient degree of flexibility.** Additional clarity and transparency in the form of procedures for Venice Commission activities would be beneficial to ensure a consistent approach beyond common practices and increase the legitimacy of the Venice Commission's work. This could be led by the sub-commission on working methods with the input of the wider Venice Commission members.

### 3.4 Impact

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**The Venice Commission's impact varies across countries and is evidenced in the form of implementation of its recommendations at a national level, but also through references to its work by international institutions, civil society organisations and the media.** The Venice Commission played a very important role in the 1990s and early 2000s in helping countries in Central and Eastern Europe to make a transition to democratic systems based on the rule of law. Since then, the Venice Commission has performed a continuing role in relation to some European countries and others beyond European borders with evidence of similar impacts. Its guidelines, reports and opinions are seen by the international community as setting the standards for democracy, the rule of law and fundamental rights, and referred to by national authorities, civil society and the wider international community alike.

**The Venice Commission's constructive and sensitive engagement with national authorities and other national stakeholders is the basis of the respect it commands and ultimately the impact it achieves.** Sharing the ownership of reforms with the relevant authorities and accompanying them in the process through formal and informal consultations, the Venice Commission's adaptability is seen as key in contributing to developing national authorities' capacity to adopt, amend and implement reforms to the extent that political will and the broader contextual situation allows. While the role of the EU and other international organisations like the IMF play a relevant role as leverage in implementation, for example by referring to Venice Commission recommendations as a condition in accession negotiations, the Venice Commission's independence and autonomy is to be safeguarded.

**Recommendation 9: Maintain and increase over time the Venice Commission's dialogue-based and constructive approach in relation to member states.** The constructive, dialogue-based approach of the Venice Commission should be maintained and preferably further developed with the support of additional resources as one of its key features contributing to the Venice Commission's positive impact. The role of formal and informal consultations in the implementation phase could be further expanded so as to provide additional guidance to authorities in translating the recommendations into practice. In that sense, a more adequate (i.e. increased) number of events should be held following the issuing of opinions to help their dissemination and ensure the understanding and ultimately buy-in of stakeholders. These meetings could help clarify questions and assist in the implementation phase as requested by the authorities.

**Finally, the limited monitoring of the implementation of recommendations included in the individual opinions limits the capacity of the Venice Commission to understand its own impact over time, gain insights into the developments of individual countries and inform their approach for future engagements.** Although some degree of follow-up is provided in the plenary sessions, in annual reports and on the website, there is room for additional follow-up in the form considered most appropriate and in line with the Venice Commission mandate and its available resources.

**Recommendation 10: Consider the development of an internal monitoring and evaluation framework to help increase internal insights on the extent of the Venice Commission's impact.** This would need to be developed in consultation with the member states for it to be in line with the Venice Commission's mandate and without compromising its working methods and good relations with member states. In addition, the

necessary resources would need to be made available for the Venice Commission to be able to develop and implement such monitoring mechanism. Different approaches could be considered, including the coverage of all opinions or only some (for example those requested by state authorities or those considered to be most sensitive). It could be kept internal or made public – the implications of each option would need to be assessed and be carried out by the rapporteurs themselves after the appropriate period of time or be done in co-operation with Council of Europe bodies tasked with monitoring (for example, PACE or the Committee of Ministers. For the latter, Council of Europe bodies could refer to implementation in their monitoring reports, further strengthening the cross-reference across Council of Europe bodies.) If the results were to be made public, a more developed monitoring and evaluation framework would be welcome by international and national partners alike and constitute an additional source of reference to the Venice Commission in its future engagements.

#### **4. Methodological note**

The evaluation framework for this study was based on a Venice Commission “theory of change” and evaluation matrix provided by the DIO and further developed by CSES. The research involved an analysis of Venice Commission documentation; interviews with 120 contacts including Venice Commission members and the Secretariat, national authorities, representatives of the judiciary and legal profession, non-governmental organisations (NGOs) and others; an online survey of Venice Commission members (42 responses) and another survey of member states (106 responses); direct observation in Venice, as well as field trips to Poland, Ukraine and Republic of Moldova<sup>1</sup> within the scope of the five case studies ([Appendix D](#)). An inception report was submitted on 16 July 2021 with an interim report following on 4 October and the draft final report on 6 December 2021. The second version of the draft final report was submitted on 10 January 2022.

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<sup>1</sup> This mission was organised online as a result of the health measures in place.

# 1. Introduction

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This document contains the final report on the Evaluation of the European Commission for Democracy through Law (Venice Commission), commissioned by the Directorate of Internal Oversight (DIO) of the Council of Europe and carried out by the Centre for Strategy & Evaluation Services (CSES) during the second half of 2021.

## 1.1 Resume – Objectives and scope

The purpose of this evaluation was to evaluate the extent to which the Venice Commission has and continues to achieve its objectives. The more specific aim was to answer the following evaluation questions.

- ▶ To what extent is the work of the Venice Commission relevant?
- ▶ To what extent has the work of the Venice Commission been effective in achieving the objectives and expected results as outlined in the Programme and Budget documents 2016-2021?
- ▶ To what extent has the Venice Commission been efficient in implementing its programme of activity?
- ▶ What has been the impact of the Venice Commission since it was founded 30 years ago?

The DIO's terms of reference ([Appendix A](#)) included an evaluation matrix setting out more specific issues relating to the evaluation criteria (relevance, effectiveness, efficiency and impacts), possible performance indicators and other information. This was supported by a "theory of change" and a suggested methodological approach.

The purpose of the evaluation was to contribute to the Council of Europe's efforts in exploring and optimising the Venice Commission's work, to enhance the coherence and synergy of actions, as well as to highlight the impact of the Venice Commission since its establishment in 1990. In terms of scope, the evaluation covered the 30 years since the foundation of the Venice Commission for relevance and impact but with a focus on the period 2016-20 for efficiency and effectiveness. The DIO's terms of reference stipulated that all the Venice Commission's activities should be covered by the evaluation – the opinions, standards, reports and guidelines, etc. In relation to the Venice Commission's impacts, the primary focus is on the rule of law in member states – ensuring the democratic functioning of institutions, respect for fundamental rights, and constitutional justice and electoral reform.

## 1.2 Methodological approach

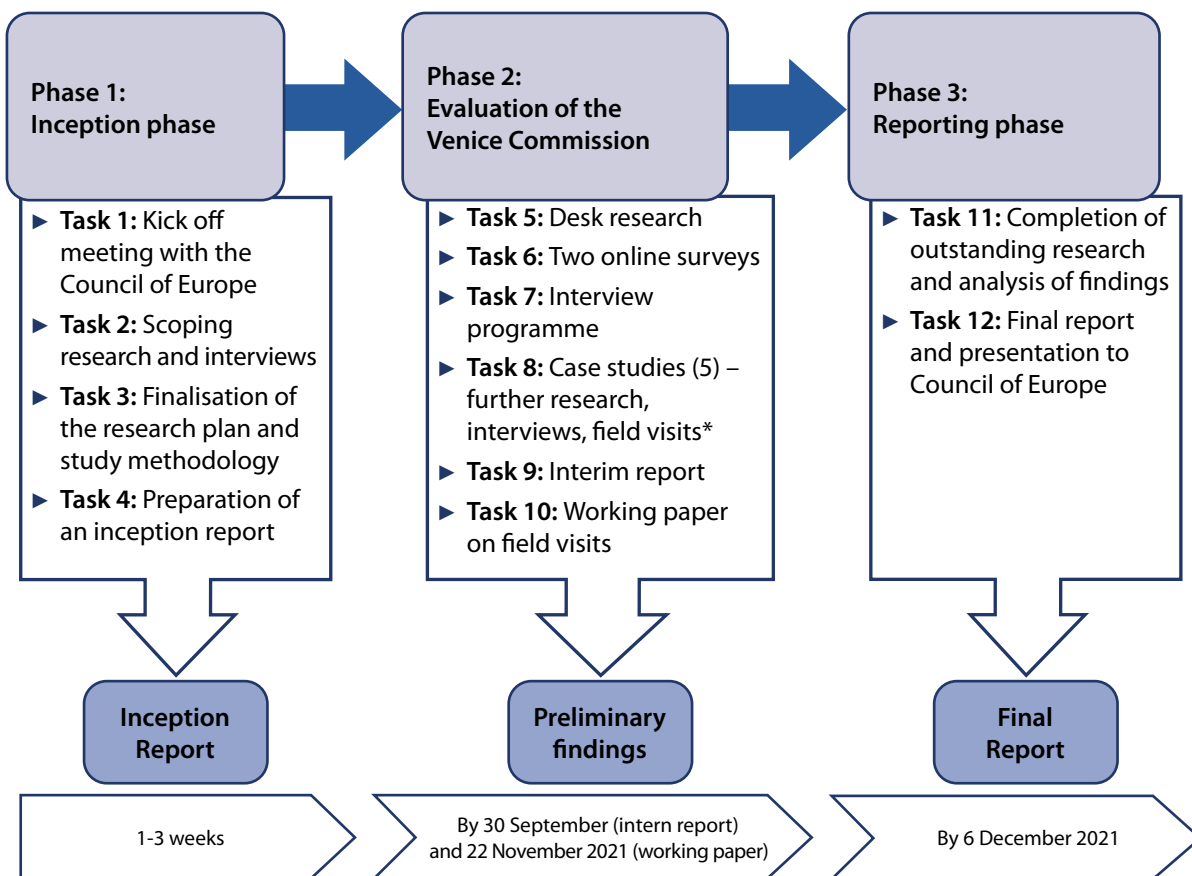
To summarise, the evaluation of the Venice Commission was carried out in three phases.

- ▶ **Phase 1: Inception phase** – preparatory tasks included a kick-off meeting with the Council of Europe; initial desk research and preliminary interviews to finalise the methodological approach; further development of a theory of change; a reference group meeting and an inception report (16 July 2021).
- ▶ **Phase 2: Implementation phase** – data collection and analysis through desk research to analyse key documentation; two online surveys and an interview programme with key stakeholders; other research including case studies and three field visits. An interim report was submitted on 4 October 2021.
- ▶ **Phase 3: Analysis and reporting** – detailed review, analysis and triangulation of the research findings and preparation of a draft final report (6 December 2021).



The following diagram summarises the research plan for the evaluation and the timing of the different phases.

**Figure 1.1: Research plan**



\* To be replaced with remote interviews with stakeholders if field visits not possible due to the Covid-19 pandemic.

Source: CSES own elaboration

The Venice Commission “theory of change” (ToC) and evaluation matrix provided by the DIO and further developed by CSES in the inception phase provided an overall framework for the evaluation. The ToC provided a reference point, setting out the Venice Commission’s objectives and then the various inputs and processes that explain how, in theory, these objectives should be translated into outcomes. The evaluation matrix set out criteria for assessing the Venice Commission’s relevance, efficiency, effectiveness and impacts, together with the key performance indicators and main data sources. The Venice Commission ToC is included below while the ToC developed by CSES and evaluation matrix can be found in the [Appendix B](#).

The data collection for the Venice Commission evaluation involved a mixed-method approach comprising of desk research to examine Venice Commission documentation, an extensive interview programme, two online surveys, case studies and field trips to three member states. More details are included below.

### 1.2.1 Theory of change

At the core of the evaluation framework is a ToC comparing “what should be achieved and how” with an evaluation’s assessment of “what has actually been achieved and how”. The ToC below (see Figure 1.2) was prepared by the Venice Commission Secretariat for the draft Programme and Budget 2022-2025. It is based on a three-level outcomes approach which is in line with the ToC of the Council of Europe as a whole and its results-based management approach, thereby aiming to formulate how it seeks to influence change.

**Figure 1.2: Venice Commission theory of change as prepared for the draft Programme and Budget 2022-2025**

| Theory of change   |   |   |  |   |
|--|---|---|--|---|
| Outputs  |   |   |  |   |
| What the Council of Europe produces                        |   | Immediate outcomes  | Intermediate outcomes  | Impact  |
| Co-operation 67%<br>Monitoring 17%<br>Standard setting 16% | <ul style="list-style-type: none"> <li>▶ Venice Commission opinions (constitutional and legislative reforms)</li> <li>▶ Venice Commission reports, studies and guidelines</li> <li>▶ Bulletins on Constitutional Case-Law</li> <li>▶ Capacity building (pre-electoral assistance, scientific events, training)</li> <li>▶ Legal support to lection observation</li> </ul> | <ul style="list-style-type: none"> <li>▶ National authorities have identified actions to improve their constitution and legislation.</li> <li>▶ National authorities could rely on detailed standards to assist them in devising legislation.</li> <li>▶ National authorities have increased their capacity to ensure the interpretation and implementation of the constitution and legislation in accordance with the common constitutional heritage.</li> </ul> | <ul style="list-style-type: none"> <li>▶ National authorities adopt, amend and implement their constitutions and legislation in compliance with the common constitutional heritage as recommended by the Venice Commission.</li> </ul> | <ul style="list-style-type: none"> <li>▶ National authorities ensure the democratic functioning of their institutions based on the rule of law and respect for human rights.</li> <li>▶ Persons enjoy their rights and democratic functioning of their institutions, based on the rule of law.</li> </ul> |
|  |   |   |  |   |

The evaluation team further developed the ToC produced by the Venice Commission to reflect feedback from the interviews, the review of key documents (including but not limited to the terms of reference), the Council of Europe Programme and Budgets, the Venice Commission’s annual reports, the guidelines relating to the working methods of the Venice Commission and several academic articles).<sup>2</sup> The expanded ToC resulting from this assessment and the underlying assumptions can be found in [Appendix B](#).

### 1.2.2 Interview programme

The interview programme was a key part of the research for this evaluation. In total, 120 interviews were undertaken with a wide range of stakeholders – members of the Venice Commission, the Secretariat, national authorities, NGOs and others (see Table 1.1). With the exception of the field trips to Poland and Ukraine, all the interviews were carried out using videoconferencing methods because of the Covid-19 pandemic.

[Appendix C](#) contains a list of interviewees. This will be anonymised for the public version of the report.

### 1.2.3 Survey work

To make the evaluation of the Venice Commission as inclusive as possible, we carried out two online surveys. The first survey focused on Venice Commission members (Survey 1) and the other on a wider group of stakeholders including the member states (Survey 2). The purpose of the surveys was to provide additional feedback on key issues that the evaluation investigated as well as making the research as inclusive as possible.

<sup>2</sup> Craig (2017), De Vissier (2015) and Hoffmann-Riem (2014).

When Survey 1 was closed (27th September), there were 42 responses from Venice Commission members (this represented a response rate of some 60%). Most of those completing the questionnaire (55%) had at least five years' experience of being a Venice Commission member (with almost a third (29%) having been a member for over 10 years), so they were well qualified to comment on the Venice Commission's role.

For Survey 2, a total of 108 questionnaires were completed by the time the survey was closed (18th October) but the number of usable responses, i.e. those sufficiently complete to justify analysis, was lower (between 60-80, depending on the question. Not all questions were answered by the respondents). Approaching half (43%) of the respondents were representatives of national authorities while Permanent Representations (17%), civil society organisations (17%), academia (13%), intergovernmental organisations (10%) and others accounted for the remainder. The respondents came from a wide range of countries – 44 in total. Seven countries (Belgium, France, Kosovo,\* Latvia, Portugal, Switzerland and Turkey) accounted for just over a third of the responses with the rest spread quite evenly across the other countries. The survey questionnaire was made available in two languages. Most (89%) were completed in English with the remainder in French. Similar questions were asked in the two surveys.

### 1.2.4 Case studies and field trips

Five case studies were undertaken as part of the evaluation to provide an opportunity to investigate different aspects of the Venice Commission's work in more depth. The cases studies focused on: (1) democratic institutions and fundamental rights; (2) constitutional justice; (3) elections, referendums and political parties; (4) technical co-operation activities (projects and programmes); and (5) international co-operation and external relations. In each case, a number of Venice Commission opinions were examined, studies and reports relating to a number of countries (11 in total). Full details are provided in [Appendix D](#).

Field trips were undertaken to Poland and Ukraine. These trips lasted around two to three days and involved face-to-face meetings with representatives of the national authorities in the two countries, the judiciary and legal profession, NGOs and other stakeholders. A third "field trip" (Republic of Moldova) was carried out remotely due to the Covid-19 measures that were in place at the time when the research had to be carried out.

The following table provides a summary of the data collection undertaken for this evaluation of the Venice Commission.

**Table 1.1: Summary of data collection**

| Stakeholder groups                            | Survey     | Interviews | Total      |
|---|------------|------------|------------|
| Venice Commission Secretariat                 | n/a        | 11         | 11         |
| Council of Europe staff members               | n/a        | 15         | 15         |
| Members of the Venice Commission              | 42         | 19         | 61         |
| Permanent Representations                     | 22         | 3          | 24         |
| National authorities                          | 46         | 40         | 86         |
| Civil society and academia representatives    | 29         | 18         | 47         |
| Representatives of international organisation | 9          | 8          | 18         |
| Others  | n/a        | 6          | 6          |
| <b>Total</b>                                  | <b>148</b> | <b>120</b> | <b>268</b> |

Overall, the number of interviews conducted exceed the target of 100 that was agreed with the DIO. As far as the survey work is concerned, the target set in the inception report for Survey 1 responses from Venice Commission members (80) was not achieved but on the other hand the target for member states and other stakeholders (125) was quite close to being attained.

The research tools, including the semi-structured interview guides and the survey questionnaires, are available in [Appendix E](#).

<sup>3</sup> \* All references to Kosovo shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

## 1.2.5 Methodological limitations and difficulties

In carrying out the evaluation, there were several methodological limitations or difficulties, which the evaluators aimed to minimise as far as possible.

First, the long time frame of the evaluation, covering the 30 years since the foundation of the Venice Commission, meant that the evidence available on the earlier years was inevitably limited, compared at least with the more recent years. This meant that while desk research was carried out for the broader time frame, interview feedback mainly focused on the last five years (2016-2021), a period still fresh in people's minds. The qualitative insights from people directly involved in Venice Commission activities therefore mainly refer to the most recent years. In those cases where interviewees were involved in the Venice Commission's work over a longer period of time, questions also addressed the historic perspective in order to gain insights on events prior to 2016.

In addition, a high proportion of the stakeholders interviewed were closely associated with the Venice Commission's activities, notably Venice Commission members, Council of Europe staff and representatives of national institutions benefiting from the Venice Commission work. Therefore, a potential positive bias needs to be considered. This was addressed during the three field trips when the evaluators spoke to a wide range of national stakeholders. The survey work also provided an opportunity for a wider range of stakeholders to express their views.

Other constraints included the limited information on the impact of the Venice Commission's interventions at a national level. This is especially so for the earlier years of the Venice Commission's operations. Furthermore, the broad geographic scope of the Venice Commission membership means that many different realities exist across member states. Examples were selected to serve as evidence for the findings while the overall analysis aimed to reflect such differences. However, given the time and resource limitations to conduct the evaluation, some additional national specificities might not have been addressed.

Similarly, the effectiveness of the Venice Commission could only be measured to a certain extent as there are many factors in member states that affect the influence of the Venice Commission. In that sense, the evaluation has focused on those developments and events to which the Venice Commission has contributed to and has aimed to consider national specificities.

Finally, the Covid-19 pandemic and travel restrictions made it impossible to carry out all but a small number of interviews on a face-to-face basis, but most contacts were able to use videoconferencing systems instead. As regards the field trips, once travel restrictions were lifted in the autumn, the evaluators were able to conduct direct observation of the Venice Commission session in Venice and online, and two field trips to Ukraine and Poland. More generally, the DIO's support in carrying out this evaluation helped to minimise the difficulties that were or could have been encountered.

## 1.3 Structure of the final report

The final report is structured as follows.

- ▶ **Section 2: Review of Venice Commission activities** – this section provides a descriptive assessment of the Venice Commission's development over the 30 years since its establishment. This section is mainly based on desk research and some interview feedback.
- ▶ **Section 3: Assessment of key evaluation issues** – this section examines the relevance, effectiveness, efficiency and impact of the Venice Commission's activities, drawing on a combination of the case studies, interviews and survey feedback.
- ▶ **Section 4: Overall conclusions and recommendations** – the final section presents the overall conclusions of the evaluation and makes various recommendations.

The report is supported by a number of appendices. [Appendix A](#) includes the terms of reference for this evaluation and the evaluation matrix. [Appendix B](#) provides a copy of the Venice Commission theory of change; [Appendix C](#) provides a list of interviews conducted. [Appendix D](#) contains the five case studies, and [Appendix E](#) the research tools: survey questionnaire and semi-structured interview guides. [Appendix F](#) provides an analysis of the Venice Commission opinions issued from 1990 to November 2021, and [Appendix G](#) contains a bibliography.



## 2. Review of the Venice Commission's activities

This section examines the Venice Commission's activities and how they have evolved over the 30 years since its foundation.

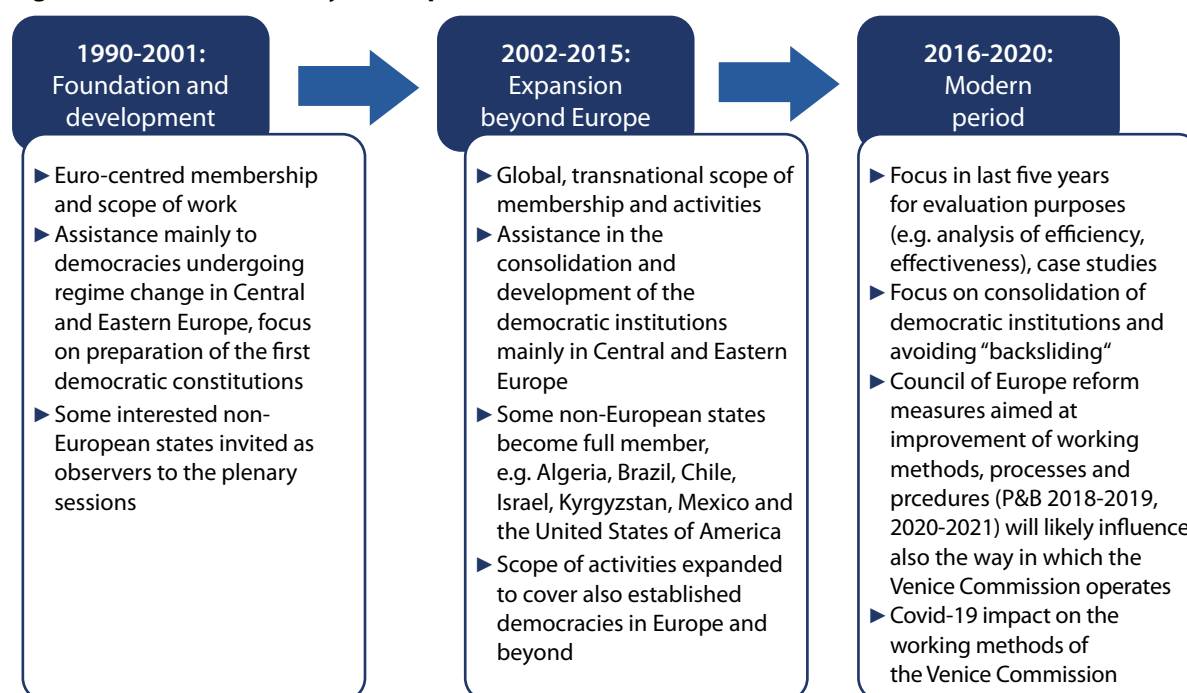
### 2.1 Establishment and development of the Venice Commission

The Venice Commission is an advisory body of the Council of Europe with the role of supporting the Council of Europe in promoting human rights, democracy and the rule of law.

The Venice Commission was established in 1990 by 18 Council of Europe member states.<sup>4</sup> This followed a Conference for the Creation of the European Commission for Democracy through Law that took place in March 1989 and was organised in Venice by the Italian minister for European Affairs and attended by foreign ministers, justice ministers and representatives of constitutional courts from the Council of Europe's then 21 member states.<sup>5</sup> The Council of Europe's Committee of Ministers subsequently approved the Venice Commission's establishment in January 1990 at a meeting that was observed by the foreign affairs and justice ministers of Bulgaria, Czechoslovakia, Hungary, Poland, the German Democratic Republic, Romania, the Soviet Union and Yugoslavia. The Venice Commission statute was subsequently adopted in May 1990.

Since 1990, the Venice Commission has played an important role in promoting human rights, democracy and the rule of law in accordance with Europe's constitutional heritage. Over time, it has expanded both its membership and activities beyond Europe and strengthened co-operation with international and national partners. Three periods in its development can be identified. There are different ways in which these three periods can be depicted but in relation to the Venice Commission, several themes are especially relevant. Figure 2.1 below highlights the three phases considered most relevant to understanding the evolution of the Venice Commission and provides an overview of the main developments in each of them, which are further considered below.

**Figure 2.1: Timeline and key developments of the Venice Commission since its foundation**



Source: CSES own elaboration

<sup>4</sup> Res(90)6 10/05/1990 on a Partial Agreement establishing the European Commission for Democracy through Law.

<sup>5</sup> Craig P. (2017), "Transnational Constitution-Making: The Contribution of the Venice Commission on Law and Democracy", in *UCI Journal of International, Transnational and Comparative Law*, University of Oxford.

### 2.1.1 Early years

The decade leading up to its foundation was dominated by the collapse of communism and emergence of liberal **democracies** in its place. Thus, 1989 saw free elections for the Soviet Congress of Deputies, Solidarity coming to power in Poland, the fall of the Berlin Wall and the regime in East Germany, and similar developments in other countries throughout Central and Eastern Europe. During the 1990s, the process of transition to becoming liberal democracies gathered pace and by the mid-1990s, many countries from the former Soviet bloc had applied to join the EU.

During this period, the Venice Commission played an important role in supporting the transition process, and indeed helping to accelerate it in several countries. In these countries it helped to prepare the first democratic constitutions and to establish the institutions, standards and practices that form the basis of democracy and the rule of law. In these early years, the Venice Commission was characterised by its European-centred membership and work.

### 2.1.2 Expansion outside Europe

In 2002, given the interest of many non-member states of the Council of Europe, the Venice Commission was transformed by an Enlarged Agreement which opened up its membership to non-European countries. This was in part a response to developments in the EU and elsewhere in the world.

The reform process in Central and Eastern Europe outlined earlier continued into the 2000s and became geographically more extensive. Meanwhile, the EU was enlarged from 15 to 25 member states following accession of countries from Central and Eastern Europe. There was a further enlargement in 2007 when Bulgaria and Romania also became EU members. In many of these countries, much remained to be done to ensure that democracy, respect for fundamental rights and the rule of law took hold and became firmly embedded, and the Venice Commission played a significant role in this respect.

Further afield, the early 2010s saw the “Arab Spring”. This and other similar developments formed the backdrop to the extension of the Venice Commission’s membership and activities to countries outside Europe.

The Venice Commission’s 2002 Enlarged Agreement and the financial support provided not only by member states as initially under the Partial Agreement but also through other extra-budgetary resources, such as the contributions made by the EU and several member states of the Council of Europe, offered the possibility to develop full-scale co-operation programmes with Central Asia, the Southern Mediterranean and Latin America.

### 2.1.3 Recent years

Reflecting the growth in the Venice Commission’s membership and the challenges it faces in meeting requests for its opinions and other support, the recent years have seen reform measures aimed at improving Council of Europe working methods which have or could have implications for the Venice Commission. In addition, the impact of the Covid-19 pandemic has had an impact on the Venice Commission’s activities and modus operandi. Its work has focused on further assisting countries in the consolidation of their democratic institutions in line with international standards while avoiding “backsliding” on reforms made in recent years.

## 2.2 Venice Commission membership, organisation and resources

As noted earlier, when the Venice Commission was established in 1990, it originally had 18 member states. Over the years, its membership has grown and it currently has 62 members:

- ▶ 47 of the Venice Commission’s members are Council of Europe member states;
- ▶ the 15 non-Council of Europe members are: Algeria, Brazil, Canada, Chile, Costa Rica, Israel, Kazakhstan, the Republic of Korea, Kosovo\*, Kyrgyzstan, Morocco, Mexico, Peru, Tunisia and the USA;
- ▶ in addition, the Venice Commission has four observers (Argentina, Japan, Holy See and Uruguay) and one associate member (Belarus).<sup>6</sup>

The Venice Commission also co-operates closely with the European Union, the OSCE/ODIHR and the Organization of American States (OAS). From an essentially Eurocentric organisation in its earlier years, the Venice Commission

<sup>6</sup> The South African Republic and the Palestinian National Authority have a special co-operation status.

has now become global with member states in all continents, albeit with a high proportion in Europe and the Americas. Figure 2.2 below summarises the geographical spread of the Venice Commission's member states.

**Figure 2.2: Member states of the Venice Commission (2021)**



Source: Venice Commission website

Article 2 of the statute regulates membership of the Venice Commission. Members are appointed by their respective countries, hold office for four years, and may be reappointed. The statute establishes that the Venice Commission “shall be composed of independent experts who have achieved eminence through their experience in democratic institutions or by their contribution to the enhancement of law and political science. The members of the Commission shall serve in their individual capacity and shall not receive or accept any instructions”. They are often senior academics with expertise in constitutional or international law, supreme or Constitutional Court judges or (former) members of national parliaments.

### 2.2.1 Organisation and resources

The Venice Commission consists of a permanent Secretariat in Strasbourg which is tasked with providing assistance to the Venice Commission and preparing the agenda for the four plenary sessions that are held each year in Venice. It also provides support for missions and preparing reports. Within the Venice Commission Secretariat, there are four main divisions covering the main areas of work: Division I deals with democratic institutions and fundamental rights; Division II with constitutional justice matters; Division III with elections, political parties and referendums; and Division IV with neighbourhood co-operation.

As a key entity of the Council of Europe, the Venice Commission's objectives and budget are set out in the biannual Council of Europe Programme and Budget.<sup>7</sup> However, the Venice Commission is not financed by the Council of Europe's Ordinary Budget. Instead, as per the Enlarged Partial Agreement, it has its own budget and working methods determined by the members who participate in the agreement.<sup>8</sup> As such, the Secretary General proposes a draft budget for the Venice Commission to the Committee of Ministers for adoption. Financial contributions are made by member states who have signed the Enlarged Agreement.<sup>9</sup> These contributions support the Venice Commission's activities in what is categorised in the Programme and Budget as “Other budgets”, as outlined below.

<sup>7</sup> The Organisation has recently adopted a longer-term Programme and Budget approach with a Programme and Budget being set for a four-year period; the budget remains biennial.

<sup>8</sup> See Res(93)28 14/05/1993, Statutory resolution on partial and enlarged agreements, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680534828>.

<sup>9</sup> As per Article 6 of the [Resolution \(2002\) 3](#) of the Committee of Ministers of the Council of Europe, “[t]he rate contribution of a non-member state of the Council of Europe to the Enlarged Agreement Budget shall be one third of its contribution as calculated in accordance with the rules for Council of Europe member states; however, it shall not be higher than one-third of the contribution by the major contributors”.



**Table 2.1: Resources of the Venice Commission 2016-2020**

| Year | Ordinary budget<br>(in €k) | Other budgets<br>(in €k) | Extra-budgetary<br>resources<br>(in €k) | Total<br>(in €k) |
|------|----------------------------|--------------------------|---|------------------|
| 2016 | 0                          | 4 350.9                  | 1 239.1                                 | 5 590.0          |
| 2017 | 0                          | 4 352.9                  | 1 150.7                                 | 5 503.6          |
| 2018 | 0                          | 4 352.9                  | 436.5                                   | 4 523.2          |
| 2019 | 0                          | 4 224.4                  | 0                                       | 4 086.7          |
| 2020 | 0                          | 4 224.0                  | 1 532.0                                 | 5 756.0          |

Source: Council of Europe Programme and Budget 2016-2017, 2018-2019, 2020-2021<sup>10</sup>

Additional financial contributions are made by the EU to the Joint Programmes and voluntary contributions from individual member states, and these constitute a significant part of the Venice Commission's resources. These additional resources are used to finance specific co-operation activities, such as those proposed in the Council of Europe's country-specific action plans, and activities in the EU "Neighbourhood" regions, as well as to respond to urgent member states' requests concerning any of the thematic areas of work.

Besides outlining the budget details, the Programme and Budget sets out the Venice Commission's activities as part of the Council of Europe "Rule of Law" programme line. The most recent edition states that "the Venice Commission will continue to contribute to ensuring that constitutional and legislative reforms comply with Council of Europe standards and to implementing and strengthening the rule of law in Venice Commission members, and in the Southern Mediterranean and Central Asia".<sup>11</sup>

While the demands on the Venice Commission have risen over the years, partly because of the increase in the number of member states but also because of developments affecting democracy and the rule of law, its financial resources have not increased proportionately.

## 2.3 Venice Commission's role and activities

The Venice Commission is, according to Article 1 of its statute (Revised Statute (2002)3),<sup>12</sup> an "Independent consultative body which co-operates with the member states of the Council of Europe, as well as with interested non-member states and interested international organisations and bodies" with its specific field of action being "the guarantees offered by law in the service of democracy". Its objectives are to: strengthen the understanding of the legal systems of the participating states, with a view to bringing them closer; promote the rule of law and democracy; and examine the problems raised by the working of democratic institutions and their reinforcement and development.

### 2.3.1 European standards

The Venice Commission provides legal assistance and advice to its 62 member states with the aim of bringing their "legal and institutional structures into line with European standards and international experience in the fields of democracy, human rights and the rule of law".<sup>13</sup> By identifying, developing and disseminating the European standards, it aims to contribute to the consolidation of the "common constitutional heritage". In addition, the Venice Commission bases its analysis and advice on comparative experience and good practice, as it counts on the practical experience of its member states in implementing the standards. Box 2.1 provides a summary of these standards.

<sup>10</sup> Expenses related to travel and subsistence of individual members of the Commission are covered by the country concerned except for the cases in which it is the Venice Commission who entrusts members with specific missions. In such case, the Venice Commission finances the costs through its budget. In addition, logistical costs for the four plenary sessions held in Venice per year such as room hire or hire for equipment and interpretation booths are covered by the Italian authorities (Regione Veneto) and the Ministry of Foreign Affairs.

<sup>11</sup> Council of Europe Programme and Budget 2020-2021.

<sup>12</sup> Resolution (2002) 3 of the Committee of Ministers of the Council of Europe (21 February 2002).

<sup>13</sup> Venice Commission. (n.d). For democracy through law, available at [www.venice.coe.int/WebForms/pages/?p=01\\_Presentation&lang=EN](http://www.venice.coe.int/WebForms/pages/?p=01_Presentation&lang=EN).

### Box 2.1: Summary – European standards

- ▶ European standards as referred to by the Venice Commission are the principles established by **international sources of law** such as the case law of the European Court of Human Rights and of the Court of Justice of the European Union, the European Convention of Human Rights, the Charter of Fundamental Rights of the EU, EU Directives and conventions of the United Nations within a given field.
- ▶ The standards can also include **principles of soft law** developed in, for example, recommendations by the Committee of Ministers and the Parliamentary Assembly of the Council of Europe, declarations by the Organization of American States (OAS), the African Union and the Association of Southeast Asian Nations as well as communications by EU institutions. As a body of the Council of Europe, the Venice Commission pays special attention to the legal situation in Europe, hence the reference to “European standards”.
- ▶ **Legislative texts** put forward for review by the Venice Commission are analysed in terms of their compliance and alignment with these standards, and recommendations made on the basis of the common experience.
- ▶ The Venice Commission also contributes to the European standards through its **opinions, studies and reports**. These bring together existing constitutional and legal principles in a given field applicable across legal and political systems and are often clarified and expanded by the Venice Commission. Examples include: the Rule of Law Checklist;<sup>14</sup> European standards on the independence of the judiciary;<sup>15</sup> the Code of good practice in elections; and the principles on the protection and promotion of the Ombudsman institution (“The Venice Principles”).

**Other institutions** have referred to the Venice Commission’s work and thereby recognised its contribution to developing and promoting European standards. These entities include the Parliamentary Assembly, the Committee of Ministers, the European Court of Human Rights and the Congress for Local and Regional Authorities, among others.<sup>16</sup> Besides the aforementioned revised statute, the Venice Commission is, as the Enlarged Partial Agreement of the Council of Europe, also governed by the Statutory Resolution (93)28 on partial and enlarged agreements.<sup>17</sup>

### 2.3.2 Main Venice Commission activities

Article 1.2 of the revised statute stipulates that the Venice Commission shall give priority to work concerning: the constitutional, legislative and administrative principles and techniques, which promote the efficiency of democratic institutions and their strengthening, as well as the rule of law; fundamental rights and freedoms; and the contribution of local and regional self-government to the enhancement of democracy.

In practice, the Venice Commission focuses on three main areas of work with, in addition, technical assistance projects to share know-how. These areas are outlined below.

**Democratic institutions and fundamental rights** – one of the Venice Commission’s main tasks is to provide assistance to member states on constitutional and legislative reforms, in particular in the fields of judicial and constitutional reforms, protection of minors, parliamentary immunities, decentralisation, fundamental freedoms and strengthening of constitutional guarantees. This assistance comes mainly in the form of opinions which provide member states with recommendations on how to bring their texts into line with international standards.<sup>18</sup> Its recommendations on how to make appropriate institutional or legal choices are based on its experts’ knowledge and a comparative analysis of the experience its member states.

**Constitutional justice and ordinary justice** – another important activity of the Venice Commission is constitutional justice. Its aim in this field is to promote the rule of law by strengthening the constitutional courts and supporting co-operation between the constitutional courts and other relevant entities. The Venice Commission’s activities in this field are supervised by the Joint Council on Constitutional Justice. This body is made up of Venice Commission members and liaison officers appointed by participating courts in the member

<sup>14</sup> Venice Commission. (2016). The Rule of Law Checklist, available at [www.venice.coe.int/images/SITE%20IMAGES/Publications/Rule\\_of\\_Law\\_Check\\_List.pdf](http://www.venice.coe.int/images/SITE%20IMAGES/Publications/Rule_of_Law_Check_List.pdf).

<sup>15</sup> Venice Commission. (2008). European Standards of the independence of the judiciary, available at [www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-JD\(2008\)002-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-JD(2008)002-e).

<sup>16</sup> Venice Commission. (n.d.). References to the work of the Venice Commission, available at [www.venice.coe.int/WebForms/pages/?p=02\\_references&lang=EN#PACE](http://www.venice.coe.int/WebForms/pages/?p=02_references&lang=EN#PACE).

<sup>17</sup> Statutory Resolution No. (93)28 on partial and enlarged agreements.

<sup>18</sup> However, the Venice Commission also assist member states in this area with other activities such as drafting reports and studies to provide a more detailed analysis.

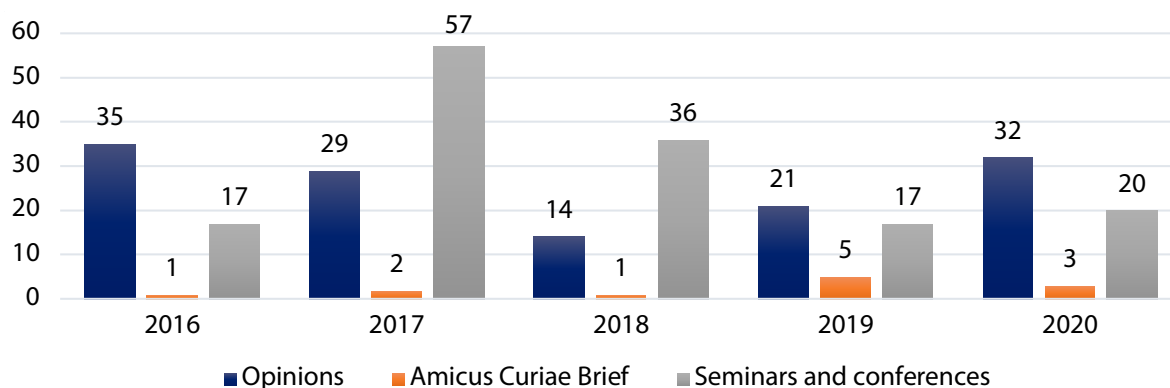
states, associate and observer countries, by the European Court of Human Rights, the Court of Justice of the European Union and the Inter-American Court of Human Rights.<sup>19</sup> The main activities involve drafting amicus curiae briefs,<sup>20</sup> the publication of its e-Bulletin on Constitutional Case-Law, which contains summaries in English and French of the most significant decisions over a four-month period, and running of the CODICES database, which contains more than 10 000 rulings made by over 100 participating courts together with constitutions and descriptions of many courts and the laws governing them.

**Elections, referendums and political parties** – the third area of Venice Commission work concerns elections, political parties and referendums. The Venice Commission has been very active in this area, issuing more than 130 opinions and over 60 texts on these issues. The electoral work is undertaken under the auspices of the Council for Democratic Elections (CDE) which is a tripartite body consisting of members of the Venice Commission, the Parliamentary Assembly of the Council of Europe (PACE) and the Congress of Local and Regional Authorities of the Council of Europe (Congress). The CDE and Venice Commission co-operate with the OSCE/ODIHR. CDE opinions, like other Venice Commission's opinions, are subject to approval by the Venice Commission's plenary.<sup>21</sup>

**Technical assistance** – in addition to the above activities, there are a number of technical assistance projects to promote co-operation and sharing of know-how with non-European partners from the Mediterranean region, Central Asia and Latin America. The projects can be multilateral, regional or bilateral in nature, and can involve capacity building and dialogue with authorities. The projects focus on thematic areas such as fundamental rights, constitutional law, constitutional and ordinary justice, and electoral legislation. Co-operation can take the form of requests for opinions, co-organisation or contribution to conferences, workshops and other events, and contacts with authorities, institutions or independent bodies. Two sub-commissions, one on the Mediterranean Basin and one on Latin America, support the strengthening of co-operation with these regions.<sup>22</sup> Co-operation with regions outside of Europe is possible through financial support received from the European Union and voluntary contributions from individual member states. A total of 19 technical assistance projects have been initiated since 2014 with expenditure in the period 2016-20 totalling €6 866 428.<sup>23</sup>

The volume of the different types of Venice Commission activities varies from one year to another and is influenced by the priorities of the Venice Commission as well as, in the case of opinions, the number and type of requests from member states and other entities. Figure 2.3 below provides an overview of the number of opinions and amicus curiae briefs delivered in recent years, and of the seminars and conferences (co)organised by the Venice Commission since 2016.

**Figure 2.3: Overview of number of selected activities of the Venice Commission 2016-20**



Source: own elaboration based on annual reports of activities

<sup>19</sup> Council of Europe (2019) Annual Report of Activities 2019.

<sup>20</sup> Amicus curiae is an opinion resulting from the request expressed by national constitutional or equivalent courts on specific issues of law.

<sup>21</sup> Craig, P. (2017), *Transnational Constitution-Making: The Contribution of the Venice Commission on Law and Democracy*, in *UCI Journal of International, Transnational and Comparative Law*, University of Oxford.

<sup>22</sup> For the purpose of the evaluation, co-operation with Latin America is classified as international co-operation and external relations whereas work done with Central Asia and the Mediterranean Basin are addressed under technical assistance projects and co-operation. The main reason therefore is that the latter have established action plans and frameworks of co-operation at country or regional level, which is not the case for Latin America. the Venice Commission's work in Latin America falls under international co-operation.

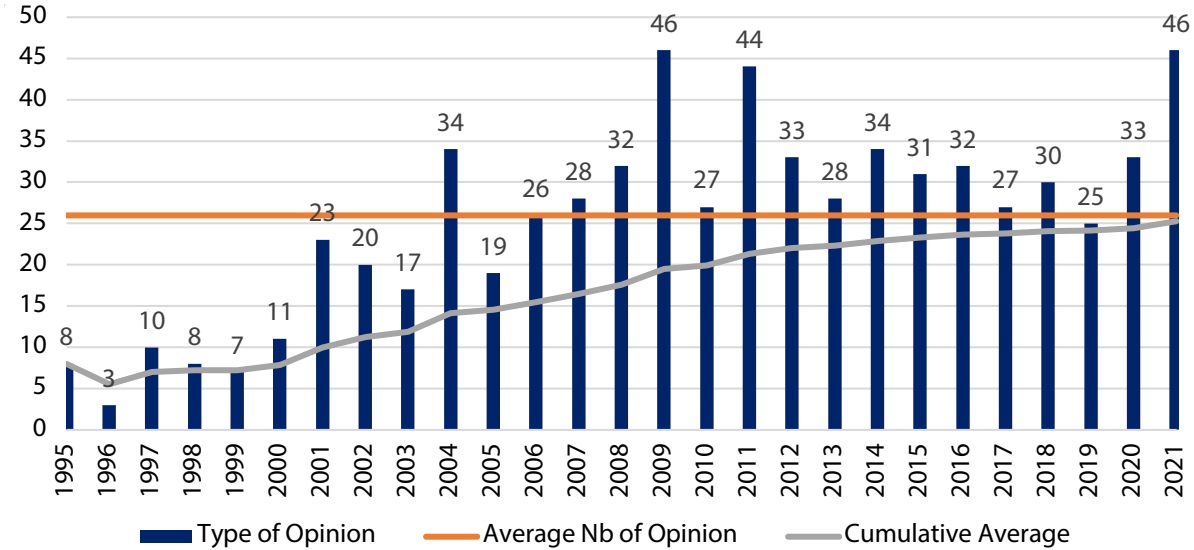
<sup>23</sup> Council of Europe, Directorate of Internal Oversight, (2020). *Terms of Reference: Evaluation of the Council of Europe's Programme on Democracy through Law* (Venice Commission).

The working method of the Venice Commission is based on constructive dialogue and a non-directive approach, following the Guidelines on Working Methods and on practice that has evolved over time.<sup>24</sup>

### 2.3.3 Venice Commission opinions

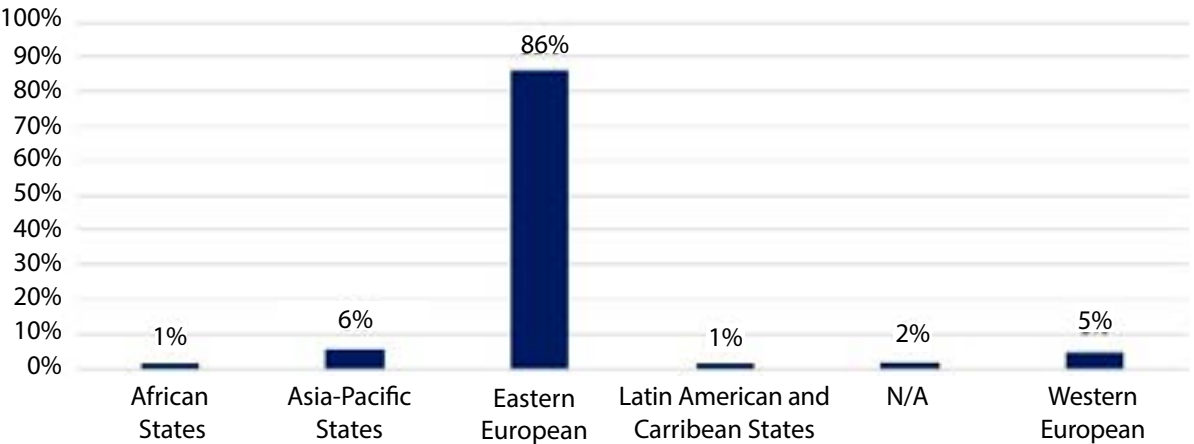
Venice Commission opinions are widely regarded as one of its most important outputs. In recent years its activities have tended to focus more and more on this activity as requests for opinions – and increasingly urgent opinions – has risen, as the chart below illustrates. Since 1995, a total of 682 opinions have so far been issued (as of October 2021) with what amounts to a fairly steady upward trend from around seven a year in the early years to 25 in 2021.<sup>25</sup> The highest proportion of opinions have come from Council of Europe member states in Eastern Europe. The following charts were produced by us using data contained on the Venice Commission’s website and annual reports of activities.

**Figure 2.4: Number of Venice Commission opinions per year (1990-2021)**



Source: own calculation based on the Venice Commission website and Annual reports of activities

**Figure 2.5: Source of Venice Commission requests for opinions by geography (1990-2021)**



Source: own calculation based on the Venice Commission website and Annual reports of activities

<sup>24</sup> Guidelines related to the Working methods of the Venice Commission, October 2010, available at [www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)034-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)034-e).

<sup>25</sup> The quantitative analysis is based on the opinions publicly available on the Venice Commission website and the annual reports of activities. The total number is to be treated indicatively as additional opinions might have been produced that are not available for confidentiality or other reasons.

The analysis indicates that of the 682 opinions that have been issued since 1995, 478 (70.1%) were requested by Council of Europe member states with a further 181 (26.5%) by the Parliamentary Assembly of the Council of Europe and most of the remainder (3.4%) by international organisations (there are some opinions where the source of the request is unclear). As the table below shows, Venice Commission opinions make up two thirds of the 682 issued since 1995 with joint opinions being the next largest category. Urgent opinions account for a relatively low proportion of the total although they have become more numerous in recent years.

**Table 2.2: Types of Venice Commission opinions (1995-2021)**

| Types of opinions     | Number     | %            |
|-----------------------|------------|--------------|
| Amicus curiae brief   | 47         | 6.9          |
| Consolidated opinion  | 6          | 0.9          |
| Final opinion         | 8          | 1.2          |
| Interim opinion       | 9          | 1.3          |
| Joint final opinion   | 3          | 0.4          |
| Joint interim opinion | 3          | 0.4          |
| Joint opinion         | 126        | 18.5         |
| Opinion               | 448        | 65.7         |
| Urgent joint opinion  | 11         | 1.6          |
| Urgent opinion        | 8          | 1.2          |
| Other                 | 13         | 1.9          |
| <b>Total</b>          | <b>682</b> | <b>100.0</b> |

Source: own elaboration based on the Venice Commission website and annual reports of activities

The Venice Commission's work on opinions usually starts with a visit to the country that has requested it, typically involving the rapporteurs who are responsible for drafting the opinion. The "fact-finding missions" typically last a few days and include meetings with key stakeholders (national authorities, the judiciary, civil society organisations, etc.) to learn first-hand about the situation being investigated. Once the opinion has been drafted by the Secretariat based on the advice of the rapporteurs, the member states are able to submit comments before it is discussed and finally adopted at one of the Venice Commission plenary sessions. This procedure is different for urgent opinions, which are often adopted in between plenary sessions. In most cases, representatives from the member states concerned are present at the plenary session in which the opinion is adopted.

In the process of drafting opinions, the Venice Commission relies on hard law, such as the European Convention on Human Rights, decisions from the Court and those from other international courts, and soft law including recommendations of the Committee of Ministers, PACE and PACE committees, and best practices contained in the Venice Commission guidelines. The precise balance between hard and soft law elements varies. Opinions are non-binding and the Venice Commission does not impose solutions on countries, although opinions have been used by other institutions as binding requirements for certain purposes. For example, the EU has referred to Venice Commission opinions in the context of accession negotiations (for example Albania<sup>26</sup> and Turkey<sup>27</sup>) and the IMF has used Venice Commission opinions as a condition for granting funds to various countries such as Ukraine.<sup>28</sup>

Opinions are issued in three core thematic areas: democracy and fundamental rights; constitutional justice; and elections, referendums and political parties. In many cases, opinions cover overarching issues, resulting in some thematic overlaps between the three main areas. Over the years, opinions have addressed a wide range of issues.

## Types of Venice Commission opinions

As mentioned above, the legal ground covered by these three areas is quite broad. However, it is possible to identify patterns in terms of the content of the opinions from the mapping exercise undertaken as part of the research (see [Appendix F](#)).

<sup>26</sup> Hoxhaj A. (2020). "The EU Rule of Law Initiative Towards the Western Balkans", *Hague Journal on the Rule of Law*.

<sup>27</sup> European Commission (2017). Joint statement by High Representative/Vice-President Federica Mogherini and Commissioner Johannes Hahn on the Venice Commission's opinion on the amendments to the Constitution of Turkey and recent events, available at [https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT\\_17\\_588](https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_17_588).

<sup>28</sup> CDL-AD(2020)022 and Paul A. (2018). "Ukraine should double down on reform in 2018". In *European Policy Centre*, available at [www.epc.eu/en/Publications/Ukraine-should-double-down-on~1d982c](http://www.epc.eu/en/Publications/Ukraine-should-double-down-on~1d982c).

In the period between 2017 and 2021, there were over 20 opinions adopted on the issue of **judicial reform**. The high number of opinions issued on the judiciary reflect the needs of the Venice Commission's member states as in most cases the opinions were requested by national authorities. However, there were some exceptions for which the Council of Europe was the requesting authority. The large-scale judicial reforms undertaken by the authorities raised concerns within the Council of Europe which asked the Venice Commission to review the reforms and assess their compatibility with European standards.

Other judicial reform aspects of the work of the Venice Commission also includes reviews of amendments to criminal codes and the role of judges. The prevalence of opinions in this legal area reflects the concerns on the part of the Council of Europe about the deviation from important legal standards in some member states.

Another important legal area covered by the opinions in recent years is that of **constitutional assistance**. It is useful to distinguish here between a number of types of constitutional assistance provided by the Venice Commission. First, the Venice Commission has been providing legal advice on the mechanisms and procedures for the drafting and adoption of constitutional amendments.

A second type of intervention by the Venice Commission in this legal area is the review of draft constitutional amendments. In recent years, this has been done for countries such as Hungary, Serbia, Peru, Georgia, Albania and Turkey. Third, the Venice Commission has also reviewed more substantial revisions and in some cases new constitutions in their entirety, for example in Bulgaria and Kyrgyzstan, and also in Luxembourg in 2019, which wanted to enshrine, among other things, a more modern approach to the issue of sovereignty in its constitution.

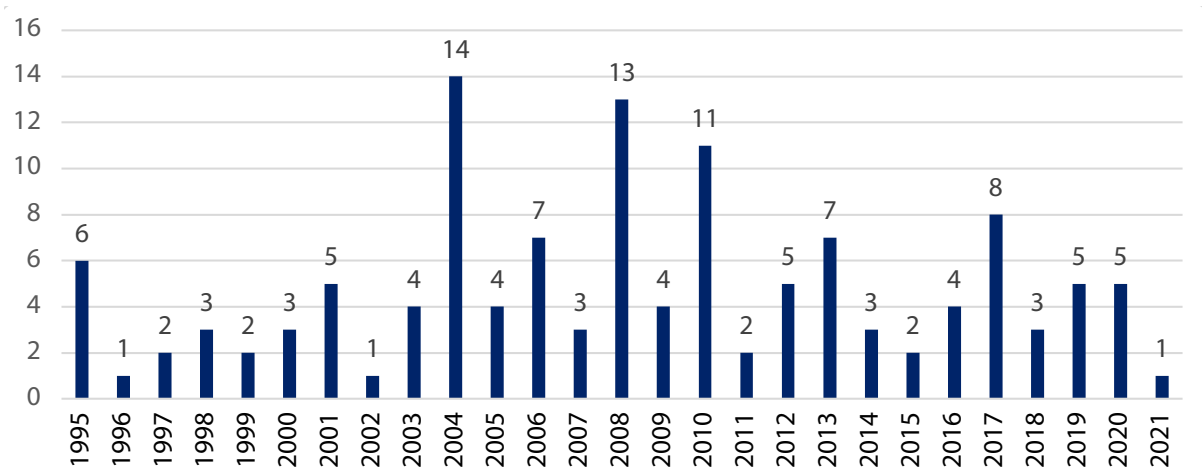
Other legal areas worth mentioning in light of the volume of opinions produced over the last few years are the degree of **compliance and alignment with international standards of certain pieces of legislation in the member states**. Another legal area is the **protection of minority rights and anti-discrimination laws**. In this legal area, the Venice Commission has adopted opinions which deal with various issues, such as electoral matters, the participation of persons belonging to national minorities in public life and the extent to which electoral laws allow affirmative action. Other issues examined within this topic include the issue of the protection of minority languages and on related issues such as freedom of religion and beliefs of religious communities

The scope of Venice Commission advice provided is quite broad and it is therefore not possible to provide an exhaustive account. However, it is worth mentioning other examples such as opinions on emergency powers, which were issued to review how these powers ought to be used and regulated to ensure rule of law principles, are not violated.

### 2.3.4 Venice Commission reports

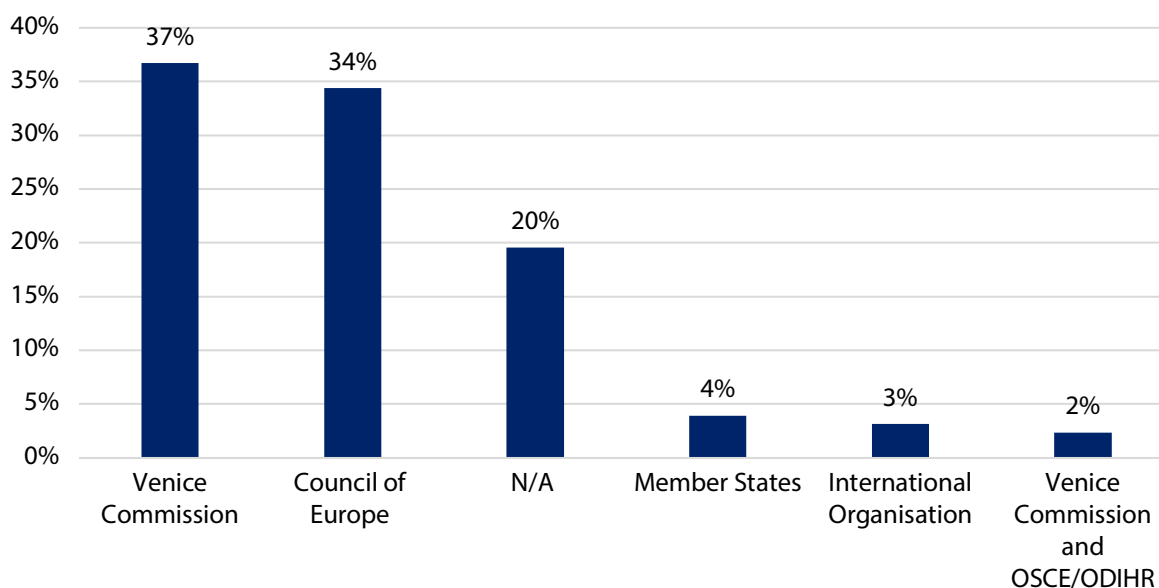
Reports by the Venice Commission experts are seen as providing an important overview of international standards and thereby promoting clarity for their implementation. The analysis suggests that the Venice Commission has published 128 studies of different sorts to date (October 2021). These include codes of good practices, guidelines and explanatory reports, among others, sometimes published jointly with the OSCE/ODIHR. They are initiated by Venice Commission members themselves or requested by Council of Europe bodies, most often the Parliamentary Assembly in the context of one of its own reports. For some reports, the requesting entity is unclear.

**Figure 2.6: Number of Venice Commission reports per year (1990-2021)**



Source: own elaboration based on the Venice Commission website and Annual reports of activities

**Figure 2.7: Number of Venice Commission reports by requesting entity (1990-2021)<sup>29</sup>**



Source: own elaboration based on the Venice Commission website and Annual reports of activities

## 2.4 Co-operation with other Council of Europe and international entities

From the outset, the Venice Commission has collaborated closely with other Council of Europe bodies, notably the PACE, the Congress, the European Court and the Commissioner for Human Rights.

### 2.4.1 Council of Europe entities

The co-operation with the **Parliamentary Assembly of the Council of Europe**, often through either its Monitoring Committee or its Committee on Human Rights and Legal Affairs, mainly involves the preparation of opinions and standard-setting studies and reports, in both cases upon the request of PACE.<sup>30</sup>

In addition, the Venice Commission provides legal assistance and advice to the PACE delegations conducting election observation missions, as stipulated in the co-operation agreement between both entities, and both bodies regularly attend each other's meetings and activities.<sup>31</sup> PACE further promotes the standards set by the Venice Commission by formally referring to its work – about 1 250 Parliamentary Assembly documents did so by January 2021, either calling on member states to co-operate with the Venice Commission or to implement its recommendations.<sup>32</sup>

Co-operation with the **Congress of Local and Regional Authorities** mainly takes place in the field of election observations and the monitoring of the European Charter of Local Self-Government, and also includes the reference to the opinions and reports of the Venice Commission in speeches and documents.<sup>33</sup> The Venice Commission, PACE and the Congress of Local and Regional Authorities together form the **Council for Democratic Elections** which was created in 2002 as a tripartite organ with the objective of ensuring co-operation in the electoral field in order to strengthen the promotion of the international common values in the field. It does so by analysing draft opinions and studies of the Venice Commission in the electoral field before their submission to the plenary session. The CDE consists of representatives of the Venice Commission and the Parliamentary

<sup>29</sup> The category "N/A" covers reports not mentioning the requesting entity.

<sup>30</sup> Opinions can only be requested in the context of a report or study that PACE is undertaking at the time. This limits the scope (and countries) it can request an opinion for which calls on the expertise of the Venice Commission.

<sup>31</sup> Co-operation agreement between the Parliamentary Assembly of the Council of Europe and the European Commission for Democracy through Law (Venice Commission), (4 October 2004), Rules of Procedure of the Assembly (February 2021), External relations of the Assembly, section XVIII available at [http://assembly.coe.int/nw/xml/rop/RoP-XML2HTML-EN.asp?id=EN\\_CEGFAJAA](http://assembly.coe.int/nw/xml/rop/RoP-XML2HTML-EN.asp?id=EN_CEGFAJAA).

<sup>32</sup> References to the work of the Venice Commission, available at [www.venice.coe.int/WebForms/pages/?p=02\\_references&lang=EN#PACE](http://www.venice.coe.int/WebForms/pages/?p=02_references&lang=EN#PACE).

<sup>33</sup> References to the Venice Commission include for example the Codes of Good Practice in Electoral Matters and on Referendums, the report on the Respect for Democracy, Human Rights and the Rule of Law during States of Emergency, and the revised Guidelines on the holding of referendums. See references to the work of the Venice Commission, available at [www.venice.coe.int/WebForms/pages/?p=02\\_references&lang=EN#Congress](http://www.venice.coe.int/WebForms/pages/?p=02_references&lang=EN#Congress).

Assembly and the Congress of Local and Regional Authorities as the political bodies responsible for election observation, with the regular participation of the OSCE/ ODIHR.<sup>34</sup>

The **Committee of Ministers** has increasingly called on member states to comply with the recommendations made by the Venice Commission, including those put forward in the context of the execution of judgments of the European Court of Human Rights. It has also endorsed some of the Venice Commission reports, such as the Rule of Law Checklist, which relevant authorities were invited to use and disseminate<sup>35</sup>. The Venice Commission reports to the Committee of Ministers on an annual basis.

The **European Court of Human Rights** refers to the Venice Commission's documents and the norms highlighted in these to support its reasoning when interpreting the scope of the rights and freedoms guaranteed by the European Convention on Human Rights. In fact, the reasoning behind many judgments is directly linked to Venice Commission opinions and studies, and other judgments and the Court's case law mention these documents as relevant to international law and practice. By February 2021, about 250 judgments and decisions of the Court referred to Venice Commission documents. The Court can request amicus curiae briefs directly from the Venice Commission.<sup>36</sup>

Last but not least, the Venice Commission collaborates with the **Commissioner for Human Rights** with the Venice Commission conducting in-depth analysis based on its members' expertise while the Commissioner looks at the broader context and reacts in a quick and flexible way to emerging threats to human rights. Work with other Council of Europe organs and department includes, for example, the Directorate General of Human Rights and Rule of Law (DGI) for joint opinions and attendance of ad hoc committee meetings, the Gender Equality Commission and the Council of Europe Working Group on E-Democracy among others.

## 2.4.2 Co-operation with international organisations

At an international level, co-operation takes place with the EU and a wide range of international organisations in the field of fundamental rights, democracy and the rule of law. The main partners are the **EU**, the **OSCE** and more recently the **OAS**.

The EU (specifically the European Commission) and the OSCE/ODIHR have special status and regularly participate in the Venice Commission's plenary sessions. A large number of other authorities and organisations work with the Venice Commission on the basis of shared standards and common objectives. These include the **United Nations**, for which the Venice Commission prepares contributions to its reports on the human rights situation in the member states, among other things, the **League of Arab States** and the **Organization for Economic Co-operation and Development** (OECD). Co-operation takes a variety of formats – exchange of views, mutual participation in events, joint drafting of opinions and reports and references to the work of the Venice Commission<sup>37</sup> as well as joint projects (notably joint EU-Council of Europe projects which are supported financially by the EU and implemented by the Council of Europe) are some examples. International co-operation is the subject of Case study 5.

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<sup>34</sup> The Council of Democratic Elections, available at [www.venice.coe.int/WebForms/pages/?p=02\\_CED](http://www.venice.coe.int/WebForms/pages/?p=02_CED).

<sup>35</sup> Rule of Law Checklist – endorsement by the Committee of Ministers of the Council of Europe, available at [www.venice.coe.int/webforms/events/?id=2288](http://www.venice.coe.int/webforms/events/?id=2288).

<sup>36</sup> References to the work of the Venice Commission, available at [www.venice.coe.int/WebForms/pages/?p=02\\_references&lang=EN#ECHR](http://www.venice.coe.int/WebForms/pages/?p=02_references&lang=EN#ECHR).

<sup>37</sup> For an overview of references to the work of the Venice Commission, see [www.venice.coe.int/WebForms/pages/?p=02\\_references&lang=EN](http://www.venice.coe.int/WebForms/pages/?p=02_references&lang=EN).





## 3. Assessment of key evaluation issues

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**T**he terms of reference for this evaluation specified that a number of key evaluation issues – relevance, effectiveness, efficiency and the impact of the Venice Commission – should be assessed. This section provides an assessment of these issues. The assessment draws on a combination of the desk research, interviews, survey feedback and case studies for evidence to support the findings.

The evidence confirms that the Venice Commission is a highly regarded institution that plays an important role in the international field through its activities to promote democratic values and the rule of law. Its modus operandi is fundamentally sound, but there are nevertheless ways in which the Venice Commission's efficiency and effectiveness might be enhanced. With increasing demand for Venice Commission opinions, but quite limited resources, the sustainability of its operations on the current basis is also questionable. The following sections provide a summary of the findings from the evaluation.

### 3.1 Relevance of the Venice Commission

*Relevance can be defined as the extent to which the Venice Commission's activities are relevant to the Council of Europe's mandate and priority areas and address the identified needs of the target group(s).*

**Overall, findings underline the importance of the Venice Commission's work as an independent authority providing legal opinions and other support to promote democracy, the rule of law and fundamental rights in the Council of Europe's member states.** As the previous section has shown, over the years since the Venice Commission's establishment in 1990, there have been many changes in the environment in which it has operated, starting with the fall of the Berlin Wall and transition of Central and Eastern European countries to democratic systems and more recently the "Arab Spring" and rise of populism in many countries. The Venice Commission has responded to these and other developments in a timely and highly relevant way. The fact that the Venice Commission is "demand-led", in particular in providing opinions on request from member states, has helped ensure that its activities have remained relevant to the needs of member states throughout the period.

This interpretation is not entirely uncontested. In some countries, the Venice Commission's opinions and other activities have conflicted with measures introduced by governments in relation to the judiciary, the electoral system and other aspects of the democratic order.

#### 3.1.1 Are the Venice Commission's interventions and key areas of work relevant to the achievement of its objectives?

**In its early days, the Venice Commission acted as a consultative body mainly for countries in Central and Eastern Europe, providing much needed legal and technical assistance to countries lacking strong democratic institutions. Since the end of the 1990s, the Venice Commission's interventions have been more wide-ranging.** Indeed, over the years, the Venice Commission has developed a range of activities that have helped to ensure that its interventions are relevant to a much wider range of member states and other stakeholders with sometimes very differing needs. Opinions and standard-setting activities, technical assistance projects, events and other networking activities, and participation in electoral observation missions have all been important in contributing to the strengthening of legal systems, the promotion of the rule of law and democracy, and helping to resolve issues associated with the functioning of democratic institutions. The Venice Commission is seen as providing clarity to the interpretation and implementation of European standards and in setting a benchmark in relation to specific issues. In such situations, the value of the Venice Commission's opinions lies less in its assistance to the national authorities but in providing an objective basis on how to assess the proposed measures with respect to their compliance with international standards.

**The diversity of Venice Commission interventions is valued by its stakeholders as it allows member states and partner institutions to benefit from its work in different ways reflecting their particular situations.** Furthermore, together with the "constructive, dialogue-based" approach, the Venice Commission offers flexibility to address issues in countries with a high level of expertise, independence and impartiality. This is the case across the three core areas of work which are seen as essential pillars for the proper functioning of

public institutions and democracies based on the rule of law. The Venice Commission's role in developing and upholding European standards on these issues, for instance, by helping to ensure that legal and constitutional systems are in line with the "common constitutional heritage" is a crucial role and very much oriented towards the fulfilment of the Venice Commission and wider Council of Europe objectives.

## Opinions

**The Venice Commission's opinions are generally considered the most relevant type of activity in addressing a specific situation in a country, while reports and code of good practice documents are regarded as a valuable way of reviewing and offering an overview of European standards.** Indeed, feedback from the survey of Venice Commission members indicates that Venice Commission opinions are seen as having the greatest relevance to the achievement of its objectives (almost all the responses were in the "very relevant" category), followed by studies and reports (79%), guidelines (74%) and co-operation activities with member states (50%). The Venice Commission activities that were given relatively low rankings for relevance were training, seminars and conferences and co-operation projects with countries beyond Europe. It should be emphasised that all the Venice Commission's activities were seen as being relevant to its mission and the differences were quite marginal.

**The Venice Commission's opinions examine specific pieces of legislation and put forward recommendations on how to bring these in line with international standards.** The relevance of the Venice Commission opinions is enhanced by focusing on very specific issues and problems that are referred to the Venice Commission by member states and other entities. The fact that the Venice Commission carries out quite extensive consultations with national authorities and other national stakeholders helps to ensure that local specificities are taken into account without imposing any particular model. The high-quality and detailed legal and technical assessment provided by the Venice Commission is also important in ensuring its opinions are soundly based and respected.

## Reports and guidelines

**The Venice Commission's reports and guidelines, which are often jointly produced with international organisations such as the OSCE/ODIHR, are highly valued and considered important standard-setting documents.** For example, the "Code of good practice in the field of political parties" and the "Rule of Law Checklist" are regarded by many as important contributions to the development of commonly accepted international standards and the definition of concepts otherwise used, understood and interpreted differently by different stakeholders. To take another example, the checklist "Parameters on the relationship between the parliamentary majority and the opposition in a democracy" (CDL-AD(2019)015-e, reviewed as part of Case study 1) is seen as especially important because of the wide range of different practices and the lack of formal standards in an area that has been traditionally dominated by soft law. Especially in the field of elections, where there is no comparable international entity, the role of the Venice Commission in defining standards and best practices is widely welcomed. This is the case, for instance, with the Venice Commission's report on the compatibility of remote voting and electronic voting with the standards of the Council of Europe.

**The comparative law material provided by the Venice Commission to the constitutional courts in member states (for example in the e-Bulletin on Constitutional Case-Law), although targeting a small and highly specialised audience, is nevertheless an important contribution to the promotion of the rule of law and democracy.** Feedback from the interviewees underlines the value of this publication and of the comparative dimension it includes as being very useful to members of constitutional courts, judges of other courts and constitutional law specialists. Interviewees perceived the e-Bulletin together with the CODICES database as relevant and useful tools for the exchange of information about important judgments in the field of constitutional justice. The database is particularly relevant for judges, who can use the database to find similar case law in other countries that might assist them in solving similar constitutional questions already solved in other courts.

## Events

**Venice Commission-supported events are regarded as especially relevant to its standard-setting role.** For example, meetings with national authorities and other stakeholders that take place after the publication of certain opinions are seen as helpful in their implementation. Many Venice Commission events such as seminars and conferences are organised in partnership with other institutions, in particular constitutional courts, national parliaments, electoral commissions and universities, and aim to assist the practical implementation of international standards. This is also the case with events organised for the promotion of Venice Commission reports, exchanges of best practices and participation in conferences, which not only allow participants to strengthen their knowledge in specific areas but also contribute to increasing the visibility of the Venice Commission.

For example, the World Conference on Constitutional Justice, which is organised by the Venice Commission, brings together over 100 representatives of constitutional courts and councils and supreme courts from Africa, the Americas, Australia and Europe to facilitate judicial dialogue between constitutional judges on a global scale.

**However, the evidence suggests that there has been a lack of awareness of the Venice Commission's wider activities, including many of the events and publications.** This could be explained by the limited amount of active promotion of many of these events, the fact that they are meant for a specialised audience and therefore inevitably have only limited visibility outside of these circles. Nevertheless, participants and organisers of these activities regarded them as very valuable to capacity building in relation to European standards while serving as a platform for networking.

### Technical assistance projects

**Technical assistance projects implemented by the Venice Commission also make an important contribution to the achievement of the Venice Commission's objectives.** This includes technical projects that combine legal assistance in the form of opinions with other activities, or Council of Europe projects in which the Venice Commission's legal assistance is one component, such as the Partnership for Good Governance (PGG). Indeed, the QRM within the PGG is a channel specifically designed to allow the Venice Commission to examine country-specific issues and has been used by the countries of the Eastern Partnership (see Case study 4). Bilateral projects such as the one implemented in Ukraine, which focus on activities with national partners and opinions that have been requested, are seen as providing an element of continuity and stability in the work of the Venice Commission in a country and help to create a direct line of communication between the Venice Commission and the national authorities.

**Technical assistance projects are aligned with the Council of Europe's country-specific action plans and country programming documents.** Because the action plans are agreed by the Council of Europe with the authorities of a member state or Neighbourhood partner country concerned, the Venice Commission's projects are seen as an important part of the overall assistance provided by the Council of Europe to a country. In addition, multilateral projects covering a specific topic in several countries remain flexible to address needs from individual countries as agreed with funding partners, often the European Union.

### Electoral observation missions

**The participation of Venice Commission experts in electoral observation missions that are undertaken by the Council of Europe's Parliamentary Assembly (PACE) and the OSCE/ODIHR is valued by these organisations but is questioned by others, mainly because of the limited resources available to the Venice Commission.** Following an agreement with PACE in 2004, the Venice Commission takes part as a legal councillor in PACE's election observation missions providing legal expertise. Some of the interviewees questioned the relevance of the Venice Commission providing legal expertise to such missions, which already include experts from PACE and the OSCE/ODIHR and raised the concern that the involvement of the Venice Commission could distract it from other important tasks where it has the potential of making a bigger impact. However, at the same time, some participants of such missions highlighted the valuable role played by the Venice Commission as a politically independent body and the added value of its expert input before, during and after observation missions. Indeed, PACE values the participation of the Venice Commission in these missions, which at the same time helps the Venice Commission ensure that its own assistance activities in the electoral field are based on the realities on the ground.

**In the international sphere, the Venice Commission examines the workings of democratic institutions at the request of other international institutions.** This was the case, for example, in 2020 when the European Parliament issued its first ever request to the Venice Commission for a comparative report on the measures taken by EU member states during the Covid-19 pandemic. In the context of the pandemic, it was feared that legislative reforms may have at times been imposed on the pretext of the emergency situations, restricting freedom of assembly and expression to a disproportionate extent. In such cases, the Venice Commission's role in examining the impact of extreme situations on fundamental rights and the rule of law is arguably more relevant than ever.

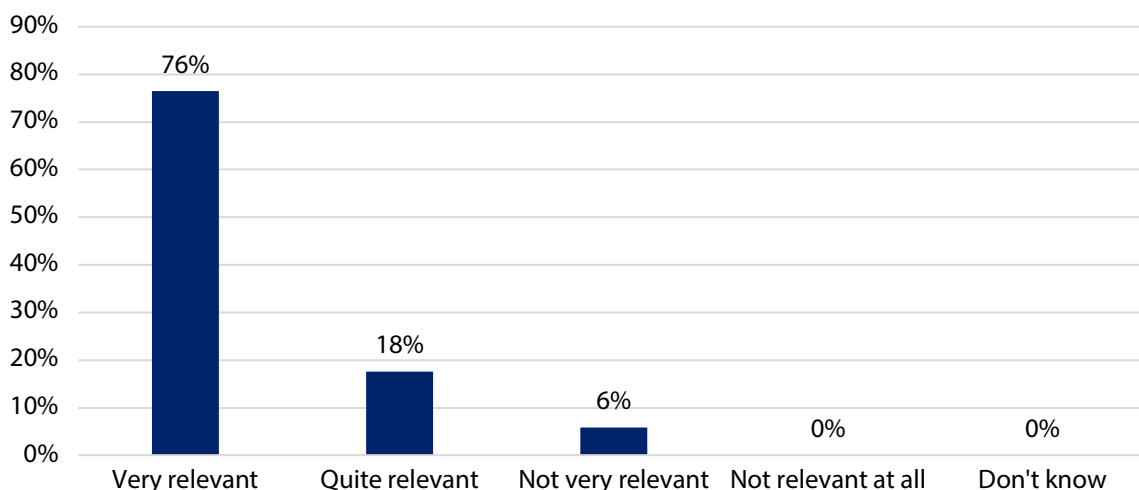
**The evidence suggests that the Venice Commission has engaged in a broader set of activities across a wider range of topics than envisaged by its founders.** The broad interpretation of the Venice Commission's mandate by its members and leadership has provided room for the Venice Commission to explore additional areas over the years, expanding the scope of its work. This includes, for example, providing legal advice on issues such as pluralism and freedom of the media which, some argued, had no clear legal basis in the Venice Commission's statute. Although media pluralism and freedom, and minority languages, are important elements of functioning democracies, it was argued that these are not strictly linked to the Venice Commission's objectives and three core areas of work. There have been similar opinions in the past but some interviewees

regarded this as going beyond the Venice Commission’s remit and argued that it should limit itself to constitutional and legislative matters.

### 3.1.2 To what extent are the objectives and interventions relevant to the needs of member states?

Feedback on the relevance of the Venice Commission from its members is generally very positive. Almost all the Venice Commission members who participated in the survey considered its work to be either “very” or “quite” appropriate to the achievement of its objectives (85% and 15% of responses respectively). There was very similar feedback on the relevance of the Venice Commission’s activities to the member states although here the feedback was a little more mixed.

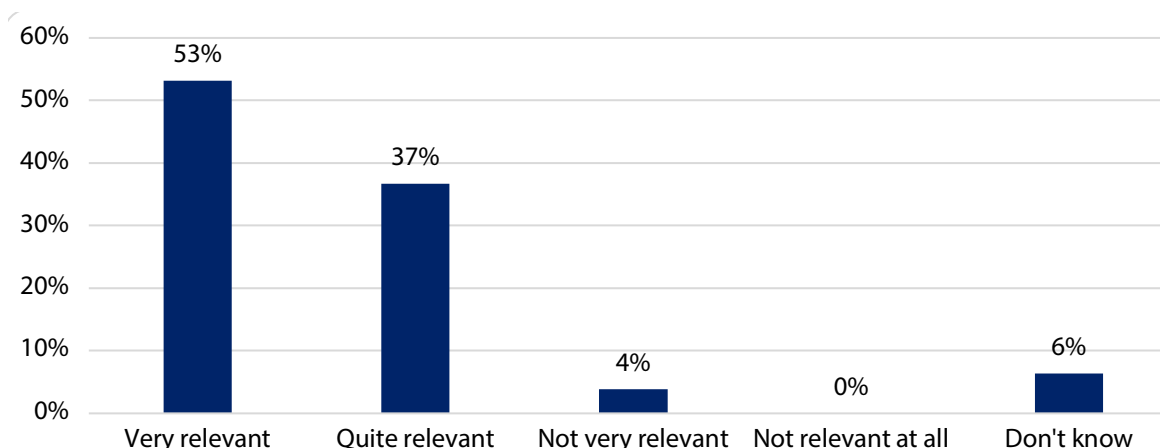
**Figure 3.1: Survey 1 - To what extent are the interventions relevant to the needs of member states?**



Source: Analysis of survey responses. N=44

As with many other questions, the Survey 2 responses to a similar question were similar in overall terms but with a lower proportion in the most positive response category: 53% (compared with 76% in Survey 1) saying that the work of the Venice Commission is “very relevant” in addressing the needs and challenges of member states and further 37% stating that it was “quite relevant”.

**Figure 3.2: Survey 2 - Do you consider the interventions of the Venice Commission to be appropriate in addressing the needs and challenges of member states?**



Source: Analysis of survey responses. N=79

A more detailed analysis of the Venice Commission member survey feedback indicates that Venice Commission opinions are seen as having the greatest relevance to achievement of the Venice Commission’s objectives (almost all the responses were in the “very relevant” category), followed by studies and reports (79%), guidelines (74%) and co-operation activities with member states (50%). The other Venice Commission activities

were given lower rankings. It should be emphasised that all the Venice Commission’s activities were seen as being relevant to its mission and the differences were quite marginal.

Examples of the more general Venice Commission member survey feedback on the relevance of the Venice Commission’s activities is provided below. It should be noted that these are representative of the views expressed generally.

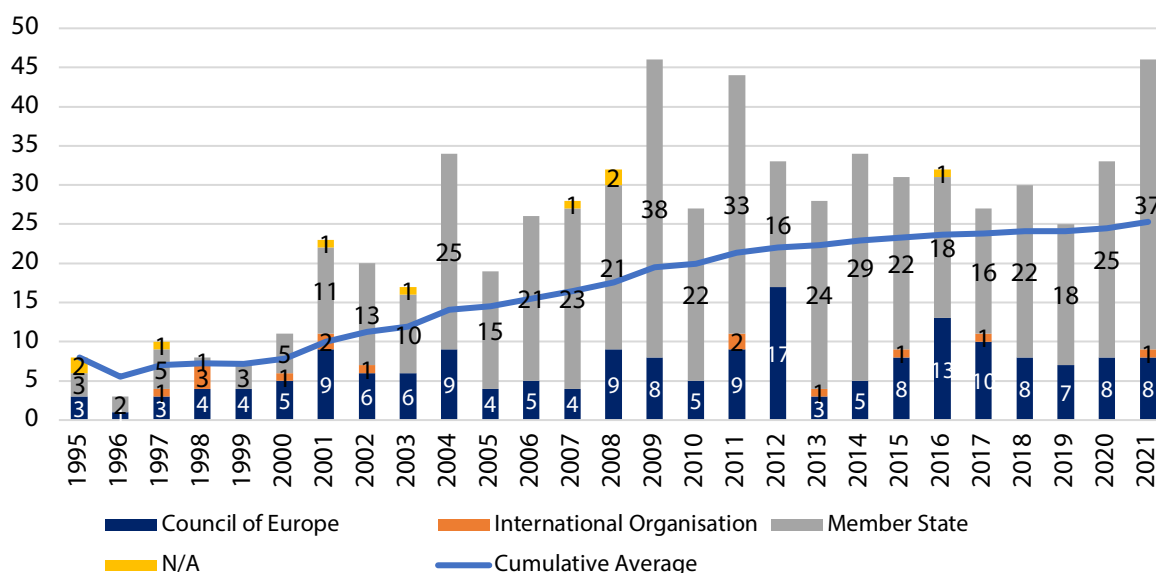
**Box 3.1: Survey 1- Feedback on relevance of the Venice Commission**

- ▶ “The work of the Venice Commission, in particular its opinions and studies, are extremely helpful for national constitutional courts in interpreting the respective constitutions in line with the European rule of law standards, in particular in finding ways to fill gaps of the constitutional reasoning and when there is no treaty law on the subject. However, sometimes making the recommendations to certain countries seem to be senseless when those countries see the request for an opinion as a pure formality and are not going to follow any recommendations.”
- ▶ “The interventions of the Venice Commission have proved increasingly relevant and important for the European Union in its rule of law efforts.”
- ▶ “The comparative study of constitutional law is essential for constitutional courts in the world and in order for the world to progress similarly. The Venice Commission is an important centre of information and feedback for this matter.”

**The increasing number of requests for Venice Commission opinions, particularly in the last few years, especially from member states rather than Council of Europe bodies, is one indication that national authorities consider the Venice Commission as being relevant to their needs.** Since its foundation, 26% of opinions were requested by Council of Europe bodies and 2% were requested by international organisations (for example the EU, OSCE, OAS). However, the vast majority (over 70%) of opinions have been requested by member states. Feedback from civil society organisations suggests that even more relevant in addressing a country’s needs are the opinions requested by entities other than the authorities, such as opposition parties through the Speaker of the Parliament in the country concerned or the PACE. In such cases, the Venice Commission is called upon to impartially examine legal questions and to act as a “mediator” either in its capacity as an external independent authority or in the resolution of technical disputes.

Figure 3.3 below shows the overall number of opinions requested since the foundation of the Venice Commission with disaggregated data to show requesting entity.

**Figure 3.3: Total number of opinions by different requesting entity over time (1995-2021)<sup>38</sup>**



Source: own elaboration based on the Venice Commission website and Annual reports of activities

**The wide thematic coverage of requests for opinions as well as the ever-changing challenges at the national level mean that the Venice Commission has had to continually address new issues, often of a**

<sup>38</sup> The “N/A” category includes requests for opinions in which no explicit mention of the requesting entity was made.

**sensitive nature, in order to remain relevant to member state situations.** The constitutional advice given to new democracies in Central and Eastern Europe is seen as having been one of the Venice Commission's main achievements.<sup>39</sup> This region has remained a key area of Venice Commission activity, at least in terms of the number of opinions published (over 580 opinions since the Venice Commission's establishment). At the same time, the Venice Commission has faced many new challenges across a broader geographical area: the Venice Commission membership has expanded to areas outside of Europe with different legal traditions; the independence of the judiciary and the rule of law have been increasingly contested in some European member states, and countries outside Europe in North Africa and the Middle East went through a turbulent period with the "Arab Spring". Nevertheless, the Venice Commission has adapted to rapidly changing circumstances and continued to deliver important support for the promotion of democracy and the rule of law, largely because of the flexibility of its working methods, and the Venice Commission's impartiality and high professional standards. This was supported by many interviewees as well as in academic research (for example, the former United Kingdom member Richard Clayton in one of his publications emphasises the valuable role of the Venice Commission during the Arab Spring, giving as an example, the Venice Commission's opinion on the final draft constitution of Tunisia<sup>40</sup>).

**A reflection of the Venice Commission's relevance is the increasing number of members since its foundation.** From the 20 members it had in 1990, the Venice Commission has grown steadily over the years to now include 62 members. The latest countries to join were Costa Rica (2016) and Canada (2019), neither of which have requested an opinion so far. For members with well-established democracies such as the United Kingdom, Venice Commission member since 1990, and the United States, which transitioned from observer to full member in 2013, the relevance in being part of the Venice Commission is very much likely to be related to "the desire to lend support to an organization that was perceived to be a force for the maintenance of liberal democratic ordering and stability in Europe and beyond".<sup>41</sup>

**References to the Venice Commission's opinions by local, federal and regional courts in their rulings** (for example, the European Court of Human Rights,<sup>42</sup> the Inter-American Court of Human Rights,<sup>43</sup> and the Caribbean Court of Justice<sup>44</sup>) suggest not only that its work is held in high regard in the legal circles of the Council of Europe's member states but also that it is an important source of legal standards in the wider international community.

### **3.1.3 To what extent are the objectives of the Venice Commission consistent with the objectives of the Council of Europe?**

**The Venice Commission's objectives are very much in line with the Council of Europe's three strategic areas of competence: human rights, the rule of law and democracy.**<sup>45</sup> Through its wide range of activities, the Venice Commission is seen as contributing to the Council of Europe's "ultimate goal ... to foster greater unity based on common values, thereby safeguarding democratic security in a Europe without dividing lines". Indeed, recognising and respecting the diversity of systems in its member states – within the boundaries of the standards promoted by the Venice Commission – has been emphasised as a key aspect of the relevance (as well as effectiveness and impact) of the Venice Commission. Survey responses from Venice Commission members further reinforce the belief that **the interventions of the Venice Commission are consistent with the objectives of the Council of Europe**, with all but one of the Venice Commission members saying in the survey that its interventions were either "very" or "quite" consistent with the objectives of the Council of Europe.

**Requests for opinions by Council of Europe bodies, most frequently coming from the Parliamentary Assembly in the context of a report or study it is undertaking, also attest to the relevance of the Venice Commission as well as its contribution to the overall mission of the Council of Europe.** Within the Council of Europe, the Parliamentary Assembly has requested the expertise of the Venice Commission the most (over 80% of Council of Europe requests), followed by the Secretary General (about 8% of Council of Europe requests).

39 Clayton R. (2019). "The Venice Commission and the rule of law crisis", in *Public Law*, July P.L., Issue 3, Thomson Reuters and Contributors, pp. 450-460.

40 Ibid., p. 456.

41 Craig P. (2017). *Transnational Constitution-Making: The Contribution of the Venice Commission on Law and Democracy*, Indiana University Maurer School of Law.

42 By February 2021 some 250 judgments and decisions of the Court referred to Venice Commission documents, see [www.venice.coe.int/WebForms/pages/?p=02\\_references&lang=EN](http://www.venice.coe.int/WebForms/pages/?p=02_references&lang=EN).

43 Source available at [www.corteidh.or.cr/docs/opiniones/seriea\\_28\\_esp.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_28_esp.pdf).

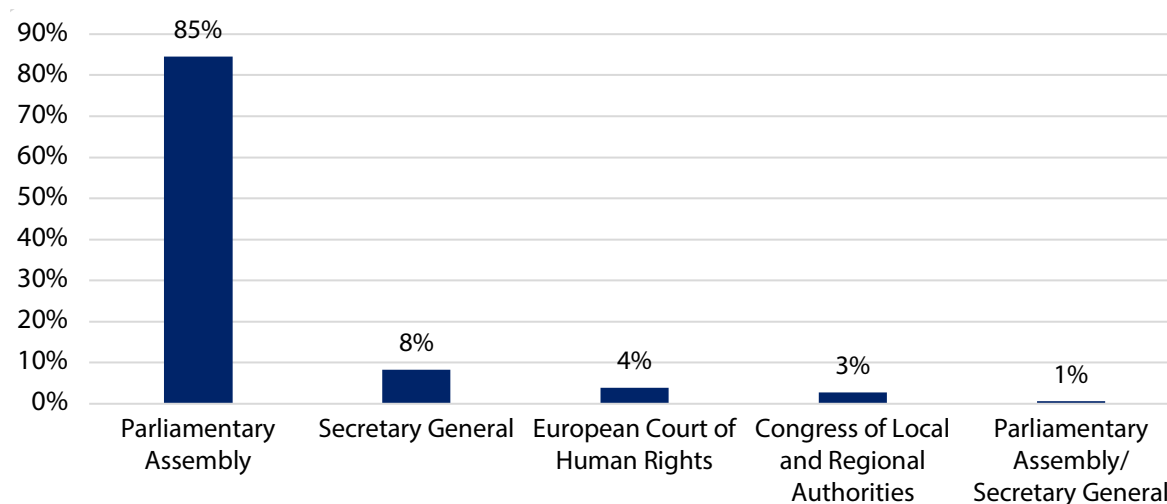
44 Source available at [www.telesurenglish.net/news/Caribbean-Court-Rules-Guyanese-Presidential-Term-Limits-Legal-20180626-0027.html](http://www.telesurenglish.net/news/Caribbean-Court-Rules-Guyanese-Presidential-Term-Limits-Legal-20180626-0027.html).

45 Council of Europe Programme and Budget 2020-2021.

The Congress of Local and Regional Authorities and the European Court of Human Rights have also asked for the expertise of the Venice Commission, but to a lesser extent with a total of fewer than 10 requests since its foundation (under 5% of Council of Europe requests each). For the European Court, the Venice Commission has issued amicus curiae briefs, for example in the cases of *Sejdić and Finci v. Bosnia and Herzegovina* (CDL-AD(2008)027), in the case of *Berlusconi v. Italy* (CDL-AD(2017)025) or in that of *Mugemangango v. Belgium* on procedural safeguards which a state must ensure in procedures challenging the result of an election or the distribution of seats (CDL-AD(2019)021).<sup>46</sup>

Figure 3.4 shows the number of requests by Council of Europe body since the Venice Commission’s foundation.

**Figure 3.4: Number of opinions requested by Council of Europe bodies (1990-2021)<sup>47</sup>**



Source: CSES own elaboration

Similarly, requests for reports on a specific topic issued by Council of Europe bodies such as the Parliamentary Assembly suggest that the work of the Venice Commission is highly valued and seen as relevant for the Council of Europe’s wider efforts. The Venice Commission reports have often served as the basis for broader Council of Europe reports and publications on the most topical issues. For example, the Report on the Democratic Oversight of the Security Services (CDL-AD(2007)016-f) and the Report on the Democratic Control of the Armed Forces CDL-AD(2008)004, both by the Venice Commission, served as the basis for the publication *Armed Forces and Security Services: What Democratic Controls?* (2009) by the Council of Europe.<sup>48</sup> The endorsement by PACE of the Venice Commission’s Rule of Law Checklist,<sup>49</sup> inviting “national parliaments and government bodies, including the relevant ministries, when assessing the need for and the content of legislative reform, to refer systematically to the Rule of Law Checklist” is another sign of alignment with the broader objectives of PACE and of the Council of Europe. This point has also been supported by feedback from Council of Europe staff interviewed for this evaluation highlighting the Venice Commission as one of the “success stories” of the Council of Europe.

Reference to the work of the Venice Commission within the Council of Europe is also a sign of the relevance of the work it carries out for the Council of Europe. Successive Secretaries General have mentioned the Venice Commission in their speeches, for example in relation to the important guidance provided on the constitutional crisis in Armenia and the judicial reforms in Republic of Moldova.<sup>50</sup> The current Council of Europe Secretary General, Marija Pejčinović Burić, participated in the 120th plenary session of the Venice Commission in October 2019 at which she stressed her support for the Venice Commission’s work “providing pivotal legal advice on important constitutional issues, and playing a key role in upholding the rule of law in Europe today”.<sup>51</sup>

<sup>46</sup> Source available at [www.venice.coe.int/WebForms/pages/?p=02\\_references&lang=EN#PACE](http://www.venice.coe.int/WebForms/pages/?p=02_references&lang=EN#PACE).

<sup>47</sup> The total numbers are based on opinions available at the Venice Commission website and the annual reports of activities and are to be treated indicatively, as there might have been some additional opinions produced not available publicly.

<sup>48</sup> Source available at [https://www.venice.coe.int/WebForms/pages/?p=02\\_references&lang=EN#PACE](https://www.venice.coe.int/WebForms/pages/?p=02_references&lang=EN#PACE).

<sup>49</sup> PACE Resolution 2187 (2017), available at <http://semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbmQvbncveG1sL1hSZWYyWDJILURXLWV4dHluYXNwP2ZpbGVpZD0yNDIxMyZsYW5nPUVO&xsl=aHR0cDovL3NlbWFudGljcGFJZS5uZlXQvWHNsdC9QZGYvWFJIZi1XRC1BVC1YTUwyUERGLnhzbA==&xsltparams=ZmlsZWlkPTI0MjEz>.

<sup>50</sup> Source available at [www.venice.coe.int/WebForms/pages/?p=02\\_references&lang=EN](http://www.venice.coe.int/WebForms/pages/?p=02_references&lang=EN).

<sup>51</sup> Speech by Secretary General of the Council of Europe, Marija Pejčinović Burić to the 120 plenary session of the Venice Commission, October 2019, available [here](#).



The Parliamentary Assembly frequently cites the Venice Commission in its own documents and resolutions, with the latest examples including the resolution on the impact of Covid-19 pandemic on human rights and the rule of law<sup>52</sup> and the restrictions on NGO activities in Council of Europe member states,<sup>53</sup> where it referred explicitly to the Venice Commission Report on funding of associations outlined in the guidelines on foreign funding of NGOs. By doing so, the Parliamentary Assembly integrates the Venice Commission's guidance in its own resolutions, suggesting that both organisations work in a complementary fashion.

## 3.2 Effectiveness of the Venice Commission

*Effectiveness can be defined as the extent of progress made towards the achievement of the expected results and the reasons for the achievement or non-achievement of intended outcomes. A related question is the extent to which beneficiaries are satisfied with the results.*

**The Venice Commission is seen as an important legal authority and independent expert body, well respected by national and international institutions and effective in carrying out its mission.** Indeed, it is in many respects a unique body at the international level in the defence of the rule of law, fundamental rights and democracy, and this is an important factor contributing to the effective fulfilment of its mission. However, the Venice Commission's effectiveness also depends on the political willingness of national authorities to accept and implement its opinions, and this is largely beyond its control.

### 3.2.1 To what extent were the “immediate outcomes” of the Venice Commission and expected results as set out in the Programme and Budget 2016-2020 achieved?

Within the biannual Programme and Budget (P&B) of the Council of Europe, targets are defined for the individual programme lines on a biannual basis. For the Venice Commission, the targets relate to the three “expected results”, which are reported on internally on an annual basis:

- ▶ **Expected Result 1** – National authorities have identified actions to improve their constitution and legislation.
- ▶ **Expected Result 2** – National authorities relied on detailed standards to assist them in devising legislation.
- ▶ **Expected Result 3** – National authorities have increased their capacity to ensure the interpretation and implementation of the constitution and legislation in accordance with the “common constitutional heritage”.

For each of these expected results, three indicators with their respective annual (indicated with “p.a.”) or biennial targets provide the baseline against which the annual performance is measured. For the first “Expected Result”, indicators are for example the number of Venice Commission opinions as well as the number of opinions reflected in national legislation, whereas for the second objective related to the promotion of standards, the performance indicators relate to the number of reports, studies and guidelines, and the number of seminars and conferences co-organised. Similarly, for the third “Expected Result” on the “common constitutional heritage” serving as baseline for national authorities, an example of an indicator used is the number of electoral observation missions to which the Venice Commission experts offer legal assistance.

As shown in Table 3.1, the targets remained fairly consistent in the period 2016-17 and 2018-19 across all the “expected results” indicators, with the exception of a slight increase in the number of electoral observation missions to which legal assistance is provided (from four to five per year). A new indicator was introduced in the P&B 2018-19 for the first “Expected Result” regarding the evidence of adoption of the Venice Commission recommendations (however, given the qualitative nature of the indicator, no targets have been set). In the P&B for 2018-19, the targets are expressed as minimums, possibly reflecting the ambition to go beyond the stipulated figure. For 2020-2021, the targets are set for the biennium, allowing for additional flexibility in the delivery of outputs over the two-year period. In practice, the number of expected outputs per year remains similar (for example, three reports p.a. in 2018 and 2019, and six reports in total for the biennium 2020-2021). One exception are the opinions, for which the target is slightly lower for the biennium (>30 opinions p.a. in 2019, >45 for 2020-2021), possibly reflecting an awareness of the need to safeguard quality in light of an ever-increasing number of requests for opinions. A more ambitious trend is reflected in the targets for the e-Bulletin on Constitutional Case-Law, for which the full shift to an online version might be the reason for the target increase from one p.a. in 2019 to six over the 2020-2021 period.

52 PACE Resolution 2338 (2020).

53 PACE Resolution 2362 (2021).

**Table 3.1: Overview of targets as set out by the Venice Commission in the Council of Europe P&B (targets are per biennium, unless indicated “p.a.”)**

| Expected results  | Performance indicators  | 2016-17 | 2018-19   | 2020-21 |
|---|---|---------|-----------|---------|
|   |   | Targets |           |         |
| <b>Expected Result 1</b><br>National authorities have identified actions to improve their constitution and legislation.   | Number of opinions on constitutional and legislative reforms provided within the time frame set by the requesting bodies.   | 30      | ≥ 30 p.a. | ≥ 45    |
|   | Number of opinions reflected in national legislation or debates.  | 20      | ≥ 20 p.a. | ≥ 35.   |
|   | Evidence of adoption, amendment of national constitutions and legislation in compliance with the common constitutional heritage following Venice Commission’s recommendation. | n/a     | n/a       | n/a     |
| <b>Expected Result 2</b><br>National authorities relied on detailed standards to assist them in devising legislation.   | Number of reports, studies or guidelines adopted.   | 4       | 3 p.a.    | 6       |
|   | Number of Bulletins on Constitutional Case-Law published.   | 7       | 1 p.a.    | 6       |
|   | Number of seminars and conferences co-organised (including World Conference on Constitutional Justice).   | 15      | 17 p.a.   | 40      |
| <b>Expected Result 3</b><br>National authorities have increased their capacity to ensure the interpretation and implementation of the constitution and legislation in accordance with the common constitutional heritage. | Number of pre-electoral assistance and training activities organised.   | 3       | 4         | > 10    |
|   | Number of election observation missions where legal support is provided.  | 4       | ≥ 5 p.a.  | 10      |
|   | Number of comparative law elements provided to constitutional courts.   | 30      | ≥ 30 p.a. | 60      |

Source: Council of Europe Programme and Budget 2016-2017, 2018-2019, 2020-2021

In terms of achievement of these “expected results” targets as measurement of the Venice Commission’s effectiveness, it can be stated that there has been consistent overall good performance over the past five years across all three “expected results” categories. Table 3.1 presents an overview of the biennial targets as set out in the P&B and the reported results by the Venice Commission on an annual basis. The traffic light system developed for the purpose of this evaluation indicates the level of achieved targets, with green indicating an achievement of 100% and above, yellow indicating an achievement equal to 75% or above of the stipulated target, and red marking results below the 75% mark. It is too early to make an assessment of results reported for 2020, as targets are set for the 2020-2021 biennium and results had only been reported for the first year of the biennium during the data-collection phase of the evaluation.<sup>54</sup>

The Covid-19 pandemic constituted a major challenge in 2020 that the Venice Commission managed to navigate successfully for relevant progress towards the achievement of its targets. As compared to the targets in previous years, the performance throughout the pandemic year is strong with results being very similar or even surpassing, in some cases, those of previous years. For example, in 2020 there were 32 opinions issued, considerably surpassing the 26 opinions in 2019 and well on track to surpassing the target of 45 for the biennium. At the same time, the number of reports, studies and guidelines produced in 2020 was 12 (the target for the biennium was six) and there were nine reports published in 2019 (the annual target was three). This confirms insights shared by Venice Commission interviewees that seeming “under-performance”, for example in relation to electoral observation missions, can be explained by the fact that some elections were cancelled or postponed due to the Covid-19 pandemic, and efforts were redirected to the drafting of

<sup>54</sup> Progress review report for 2020-2021 was not yet available at the time when the evaluation report was finalised.

reports on relevant topics. The P&B data supports the statement in the Venice Commission's own reporting of targets for 2020: "In 2020, the Venice Commission and its Secretariat have proved to be resilient, efficient and creative".<sup>55</sup> More generally, it could well be that the change towards biennial targets reflects the suitability of a more flexible approach to the Venice Commission's annual activity, given the demand-based approach of for example opinions.

A closer look at the individual "expected results" allows a distinction between effectiveness measured in terms of opinions ("Expected Result 1"), of standard-setting activities ("Expected Result 2") and of the legal assistance for the understanding of the "common constitutional heritage" ("Expected Result 3"). However, the nature of the Venice Commission's activities means that a rounded assessment of effectiveness needs to go beyond assessing simple quantitative outputs and examine the extent to which it is helping to promote the rule of law and democracy in member states, and this involves an essentially qualitative assessment. As outlined above, 2020 was an exceptional year, demonstrating the resilience and effectiveness of the Venice Commission in exceeding targets. The following analysis focuses mainly on the period 2016 to 2019.

## **Expected Result 1 – National authorities have identified actions to improve their constitution and legislation**

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In terms of "Expected Result 1" (national authorities having identified actions to improve their constitution and legislation), **the targets were fully achieved almost across all three indicators until 2019.** The number of opinions issued has averaged around 30 in recent years, and the number of opinions reflected in national legislation or debates has consistently been reported as above the target. Interviewees stressed the increasing number of urgent opinions in the last few years, resulting in additional pressure on the Venice Commission Secretariat and members in terms of delivering the opinion in a short time frame. The Venice Commission took on all requests for opinion in 2020 despite the pandemic; in fact, this has been the case throughout its entire existence according to the interview feedback.

**Opinions on many occasions helped to stimulate and were largely reflected in national and international debates.** For example, in 2019, the opinion on languages in Ukraine and opinions on the judiciary in Armenia, Georgia and Hungary, among others, were widely discussed among national stakeholders.<sup>56</sup> This was also the case for the opinion on religion in Montenegro.<sup>57</sup> Journalists and media outlets in the countries concerned confirmed the broad coverage especially in Eastern Europe and highlighted the role of civil society organisations as essential in bringing the recommendations into the public arena.

At an international level, the opinion on the Istanbul Convention<sup>58</sup> was referred to by politicians, civil society organisations and the media in Armenia but also elsewhere, for example in Bulgaria and the Republic of Moldova. Several opinions were presented at PACE hearings in presence of the respective national authorities, such as in the case of the opinion on constitutional reform on Armenia, the opinion on media on Albania and the opinions on mayors in Georgia and Turkey.<sup>59</sup> At the EU level, the 2019 opinion on the criminal procedure code of Bulgaria was discussed in 2020 at a hearing of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, also in this case in the presence of the authorities, leading to a further request for an opinion that same year. In addition, ongoing discussions about the ratification of the Convention by the EU have also mentioned the Venice Commission opinion.<sup>60</sup>

**By contrast, the reduced number of opinions issued on Western European countries in the last few years received limited public attention.** For example, the 2018 opinion on the constitutional reform in Luxembourg was taken up only to a limited extent by the media (this was similar to the 2019 opinion on Belgium or the one in 2020 on Iceland). This might be, as suggested by one interviewee, because Western European countries have other channels through which changes in legislation take place.

**Evidence of recommendations leading to an actual change in national legislation or constitutions** was introduced as a new indicator in 2018. However, no quantitative reporting has been undertaken subsequently. While quantifying the influence of Venice Commission is possible only to a limited extent, given the frequent time lags of several years between the Venice Commission's recommendation and their implementation, a qualitative assessment is conducted. The Venice Commission progress reports include a qualitative assessment

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<sup>55</sup> Progress review report 2020 – Venice Commission.

<sup>56</sup> Progress review report 2019 – Venice Commission.

<sup>57</sup> Ibid.

<sup>58</sup> CDL-AD(2019)018-e.

<sup>59</sup> Progress review report 2020 – Venice Commission.

<sup>60</sup> Progress review report 2019 – Venice Commission.

of implementation on specific cases. For example, the progress review report for 2019 mentions that “The 2018 opinion on the Stop Soros laws in Hungary was reflected in the 2019 judgment of the Constitutional Court which imposed limits on the application of these laws”, and “The Law on the Legislative Initiative of Voters in Albania adopted in July 2019 follows the 2018 opinion”.

To take a further example, “The 2014 opinion on lustration in Ukraine was shared by the European Court of Human Rights (*Poliakh and Others v. Ukraine*, 17 October 2019)”<sup>61</sup> In addition, as argued by a survey respondent, “the current law of the Ombudsperson Institution of Kosovo\* was based on the Venice Commission’s opinion and was considered as the most comprehensive law which ensures a strong independence to the Institution”. Other opinions, however, have led to only a limited or no change in legislation, providing a mixed picture of the effectiveness of the Venice Commission. For example, as highlighted by a survey respondent, the Venice Commission has been instrumental in consolidating the authority, independence and credibility of the Constitutional Court of Latvia, but its positions on ethnic minorities in Latvia have been largely disregarded. Factors influencing the effectiveness of the Venice Commission are examined in Section 3.2.3.

## **Expected Result 2 – National authorities relied on detailed standards to assist them in devising legislation**

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With “Expected Result 2” (Venice Commission activities that allow national authorities to rely on detailed standards to assist them in devising legislation), **the Venice Commission has demonstrated a high level of effectiveness.** Reports, studies and guidelines have been published and adopted as expected, the number falling slightly below the target in 2016-17. In 2019, the high number of reports (nine compared with a target of three) seems to be compensating for the lower number of opinions (26 compared with a target of 30), which suggest an efficient use of resources and the capacity to reallocate them as needed. The number of e-Bulletins on Constitutional Case-Law and the seminars and conferences co-organised also surpassed the target. The Venice Commission distinguishes in its reporting between activities co-organised for which it reports in a quantitative manner, and other activities it has participated in. Although not reflected in Table 3.1, these are briefly mentioned in the progress review reports.

**Guidelines, principles and more general reports have addressed emerging challenges, thereby helping national authorities in preparing legislation.** The Venice Commission’s studies are seen as setting standards that the authorities can rely on when drafting legislation. For example, the “Joint Guidelines on Freedom of Association” (2014) of the Venice Commission and OSCE/ODIHR helped legislators to “translate international human rights standards into domestic laws”<sup>62</sup> as little guidance existed and legislation varied substantially across the OSCE area. Similarly, the “Joint Guidelines on Political Party Regulation” (2017) updated the 2010 version, bringing together a set of “hard” law and “soft” law standards on the topic.<sup>63</sup> This was also the case with the study on “Principles for a fundamental rights-compliant use of digital technologies in electoral processes” (2017)<sup>64</sup> which is considered to have paved the way for the use of digital technologies in elections, an area until then lacking international standards. Besides, the report on states of emergency issued in 2020<sup>65</sup> set the standards in a timely manner as many countries made use of emergency powers to control the Covid-19 pandemic. Other guidelines published and mentioned by interviewees as important are: “Guidelines for Constitutional Referendums at National Level” (2001), “Guidelines for legislative reviews of laws affecting religion or belief” (2004) and “Joint Guidelines on preventing and responding to the misuse of administrative resources during electoral processes” (2014).

**Moreover, particular Venice Commission opinions are used as a reference point and have, at times, had an impact beyond the country and the situation they were first addressing.** For example, the Venice Commission has issued opinions related to the selection of candidates for different entities including constitutional courts, supreme courts and superior councils (for example in Albania, Ukraine, Georgia and Republic of Moldova). Especially in relation to the vetting of candidates, the Venice Commission’s views in opinions are seen as very useful and taken into account when drafting protocols. Although the contextual specificities vary (for example the constitutional structure and competences of the bodies are different across countries), the Venice Commission nevertheless sets the benchmark for good practices.

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61 Ibid.

62 CDL-AD(2014)046.

63 [CDL-AD\(2020\)032-e](#).

64 CDL-AD(2020)037.

65 CDL-PI(2020)005rev-e.

Other significant Venice Commission activities include the **VOTA Database**, a database of electoral legislation; this has been translated into Spanish, which is highly valued by, among others, Latin American countries eager to learn from European experience; the **CODICES Database**, which is a horizontal tool for knowledge sharing between members of constitutional courts; and the **e-Bulletin on Constitutional Case-Law**. The latter was seen by interviewees as a very relevant source of Constitutional Court judgments of over 60 courts throughout Venice Commission member states and observer states. Constitutional law experts emphasised the value of such a compilation, and highlighted the use made at national level among the experts and in the legal circles.

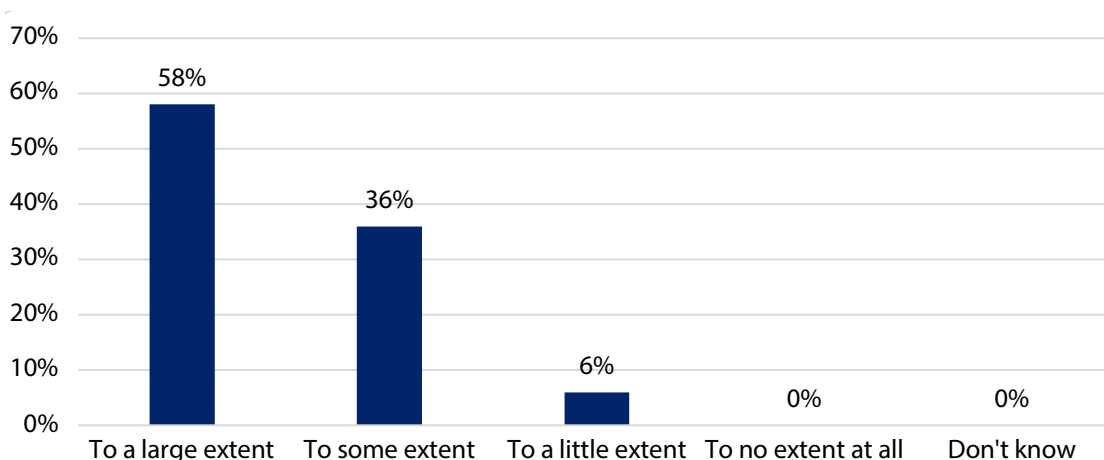
As for other activities such as the Venice Commission’s **conferences and seminars**, these facilitate the exchange of views between legal practitioners. Organised as stand-alone events in partnership with national and international organisations or as part of broader technical assistance projects (for example in Ukraine, Republic of Moldova and Armenia), these events have contributed to elaborating on detailed standards often presented in guidelines and reports, on which national authorities have relied to devise national legislation. Other examples are the conference of European Election Management Bodies and the World Conference on Constitutional Justice.

### **Expected Result 3 – National authorities have increased their capacity to ensure the interpretation and implementation of the constitution and legislation in accordance with the “common constitutional heritage”**

In the case of “Expected Result 3”, the evidence also suggests a high degree of effectiveness. The Venice Commission’s work in both the pre-electoral assistance and training activities as well as the provision of legal assistance to PACE electoral observation missions are reported to have met the targets, with only a few exceptions. Similarly, the number of comparative elements provided to constitutional courts has been fairly consistent over time. However, the Covid-19 pandemic has impacted the achievement of the results: only 20 comparative law elements were provided upon request of constitutional courts, which the Venice Commission explains reflects the lockdown period. Public health conditions further prevented the regular deployment of international observation missions resulting in only four having taken place in 2020.<sup>66</sup>

There was very positive feedback from Venice Commission members on the extent to which the Venice Commission has contributed to national legal authorities’ capacities to adapt their constitutions and legislation to the common constitutional heritage (see Figure 3.5 below). Almost 60% of all respondents were of the view that the Venice Commission had contributed “to a large extent” in developing national authorities’ capacity in line with the common constitutional heritage. Beneficiaries and national stakeholders responding to the second survey were slightly less positive, while at the same time recognising some level of contribution by the Venice Commission to developing national authorities’ capacities, with 22% responding “to a large extent”, 33% “to some extent” and 24% considering the level to be “to a little extent”. No respondents opted for the “to no extent at all” option and 22% didn’t know. The mixed picture likely reflects the varying degree of the Venice Commission’s effectiveness across countries and individual national authorities.

**Figure 3.5: Survey 1 – To what extent has the Venice Commission contributed to national legal authorities’ capacities to adapt their constitutions and legislation to the common constitutional heritage?**



Source: Analysis of survey responses

<sup>66</sup> Progress review report 2020 – Venice Commission.

**In the context of electoral observation missions, the Venice Commission has provided its legal expertise to the PACE and OSCE/ODIHR.** Legal advice was provided in all electoral observation missions that PACE deployed, for example in 2019 and 2020, and reflected in the PACE reports of the election observation missions. Venice Commission assistance covered presidential elections (in Azerbaijan, Montenegro and Georgia in 2018) and parliamentary elections (in Armenia also in 2018) and in some cases both types of elections. This was the case in 2018 presidential and parliamentary elections in Turkey when the Venice Commission provided advice on the legal framework covering the early elections (see Case study 3). The 2018 election had been seen as part of the reform process occurring in Turkey to change the electoral system from a parliamentary system to a presidential system. Throughout this process, the Venice Commission noted concerns in several opinions about the increasing concentration of power in the executive. In the election observation report, these concerns were expressed in terms of the need for a balanced media landscape and an adequate system of checks and balances over the executive. Although interviewees pointed to a limited change in legislation, they also highlighted the value in the Venice Commission's observations for the broader legal stakeholder community in Turkey.

**The Venice Commission training activities in the context of pre-electoral assistance and on related issues include training courses, workshops and other capacity-building efforts.** Over the past five years, such activities have been organised mainly in Central and Eastern Europe and North Africa (for example in Albania, Georgia, Republic of Moldova, Montenegro and Tunisia). In Ukraine, a programme of training of judges involved in electoral disputes was implemented in 2019 with a high number of activities throughout the country.<sup>67</sup> National stakeholders interviewed during the field trip to Ukraine expressed their satisfaction with such training and were appreciative of the Venice Commission support in developing national capabilities in line with the common constitutional heritage, for example through the training of judges. Because training is adapted to the national contexts and specificities, often in partnership with national NGOs and institutions, and with the input of Venice Commission members, the feedback suggests it is targeted and effective in achieving its objectives.

Finally, **comparative law elements provide a further useful source for national stakeholders to strengthen their understanding and knowledge of the common constitutional heritage.** Comparative law elements are generated mainly through the *amicus curiae* briefs issued at the request of constitutional courts and through the Venice Forum. The Venice Forum is an internet forum for discussion which is open to liaison officers from over 60 constitutional courts and courts with equivalent jurisdiction to discuss questions that arise in the participating courts' work and to request information from one another on relevant issues. Limited insights were provided by interviewees on the forum. *Amicus curiae* briefs, on the other hand, were considered very relevant by those consulted who emphasised the comparative dimension as being very informative and helpful in understanding the specificities of different jurisdictions. This is also reflected in the constant demand from constitutional courts at between two to five briefs issued per year.<sup>68</sup>

The table below provides an analysis of the Venice Commission's performance in relation to the "expected results" targets for the period 2016-20.

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<sup>67</sup> Progress review report 2019 – Venice Commission.

<sup>68</sup> In 2020, three *amicus curiae* briefs were prepared, five in 2019, two in 2018 and two in 2017. Analysis based on the Venice Commission website and annual activity reports.

**Table 3.2: Overview of achievement of the Venice Commission targets**

| Expected Results  | Indicators  | 2016    |         | 2017    |         | 2018      |         | 2019      |         | 2020   |         |
|---|---|---------|---------|---------|---------|-----------|---------|-----------|---------|--------|---------|
|   |   | Target  | Results | Target  | Results | Target    | Results | Target    | Results | Target | Results |
| <b>Expected Result 1</b><br>National authorities have identified actions to improve their constitution and legislation.   | Number of opinions on constitutional and legislative reforms provided within the time frame set by the requesting bodies.   | 30 p.a. | 35      | 30 p.a. | 31      | ≥ 30 p.a. | 30      | ≥ 30 p.a. | 26      | ≥ 45   | 32      |
|   | Number of opinions reflected in national legislation or debates.  | 20 p.a. | 25      | 20 p.a. | 25      | ≥ 20 p.a. | 26      | ≥ 20 p.a. | 26      | ≥ 35   | 22      |
|   | Evidence of adoption, amendment of national constitutions and legislation in compliance with the common constitutional heritage following Venice Commission's recommendation. | /       | /       | /       | /       | n/a       | 14      | n/a       | n/a     | n/a    | n/a     |
| <b>Expected Result 2</b><br>National authorities relied on detailed standards to assist them in devising legislation.   | Number of reports, studies or guidelines adopted.   | 4 p.a.  | 3       | 4 p.a.  | 3       | 3 p.a.    | 3       | 3 p.a.    | 9       | 6      | 12      |
|   | Number of e-Bulletins on Constitutional Case-Law published.   | 7       | 4       | 7       | 3       | 1 p.a.    | 3       | 1 p.a.    | 3       | 6      | 4       |
|   | Number of seminars and conferences co-organised (including the World Conference on Constitutional Justice).   | 15 p.a. | 17      | 15 p.a. | 46      | 17 p.a.   | 26      | 17 p.a.   | 22      | 40     | 20      |
| <b>Expected Result 3</b><br>National authorities have increased their capacity to ensure the interpretation and implementation of the constitution and legislation in accordance with the common constitutional heritage. | Number of pre-electoral assistance and training activities organised.   | 3 p.a.  | 2       | 3 p.a.  | 8       | 4 p.a.    | 10      | 4 p.a.    | 11      | > 10   | 12      |
|   | Number of election observation missions where legal support is provided.  | 4 p.a.  | 9       | 4 p.a.  | 8       | ≥ 5 p.a.  | 7       | ≥ 5 p.a.  | 5       | 10     | 4       |
|   | Number of comparative law elements provided to constitutional courts.   | 30 p.a. | 30      | 30 p.a. | 30      | ≥ 30 p.a. | 36      | ≥ 30 p.a. | 32      | 60     | 20      |

Source: Progress review report from the Venice Commission 2016-2020

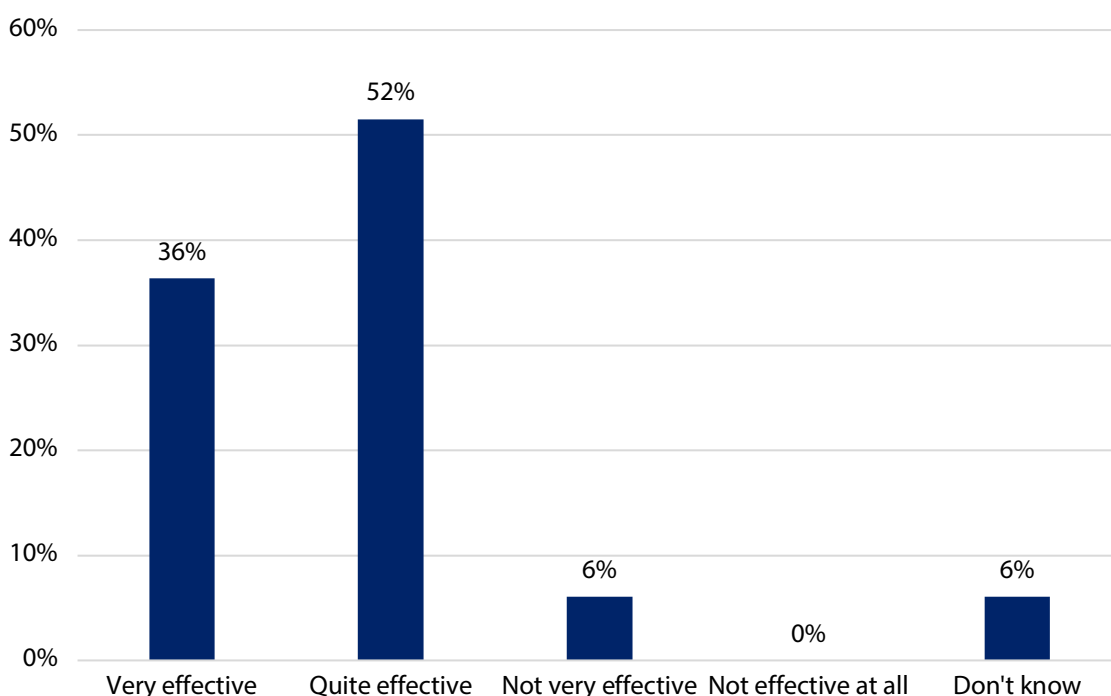
100% ≥ 75% <75% No assessment

Traffic light system measures percentage to which the target has been achieved in a given year.

Both feedback from the interviews and the survey support the above analysis and indicate that the Venice Commission is seen as having been generally effective in achieving its objectives. Despite the onset of the Covid-19 pandemic, the Venice Commission has managed to continue performing in line with its targets and is well on track to achieving the biennial targets for 2020-2021. The extent to which it does so in the face of the pandemic should become clearer once the results for 2021 have also been analysed.<sup>69</sup>

Figure 3.6 below provides a graph chart of the views of the survey respondents regarding the effectiveness of the Venice Commission in reaching its objectives and expected results. As the chart below shows, while a significant proportion of the Venice Commission members participating in the survey (36%) said that it had been “very effective” in achieving its objectives, most (52%) stated that it had been only “quite effective” in this regard.

**Figure 3.6: Survey 1 – To what extent has the work of the Venice Commission been effective in achieving the objectives and expected results as outlined in the Programme and Budget documents 2016-21?**



Source: Analysis of survey responses

### 3.2.2 To what extent were the “intermediate outcomes” of the Venice Commission achieved?

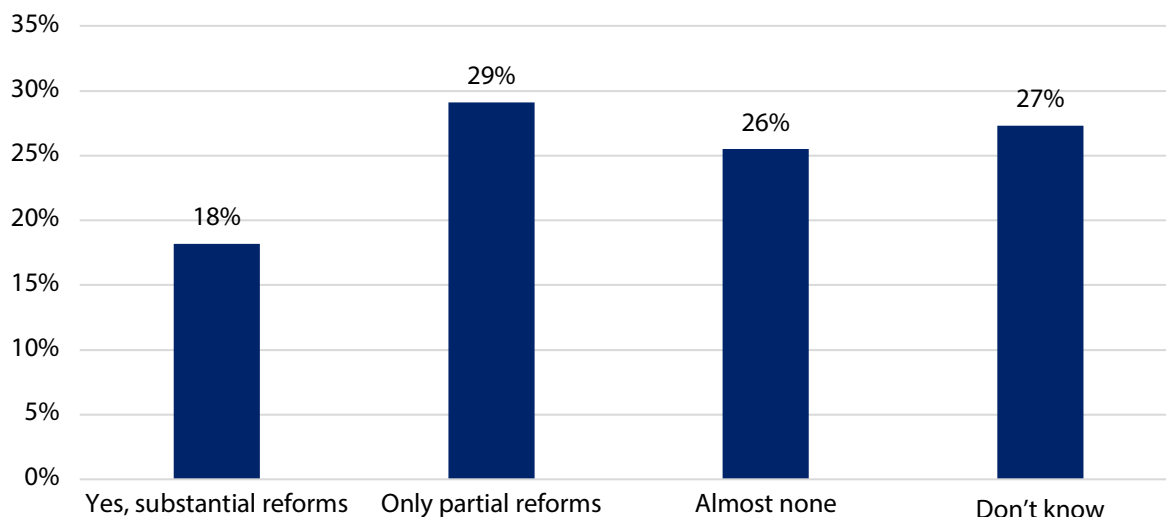
The ToC indicates the “intermediate outcome” of the Venice Commission as being for “National authorities to adopt, amend and implement their constitutions and legislation in compliance with the common constitutional heritage as recommended by the Venice Commission”. This goes beyond the P&B documentation and Venice Commission reported results. Therefore, evidence shared below relies on desk research, and survey and interview responses.

In addition to the feedback from the Venice Commission reports and interviews, the survey data shed light on the extent to which the Venice Commission’s intermediate objectives have been achieved. The survey data are analysed first. The first chart below provides an analysis of the survey feedback from member states on the extent to which the Venice Commission has contributed to significant reforms at national level. As can be seen from Figure 3.7, there is a fairly even distribution of the responses.

<sup>69</sup> The progress review report for 2020-2021 was not available at the time the evaluation report was finalised.



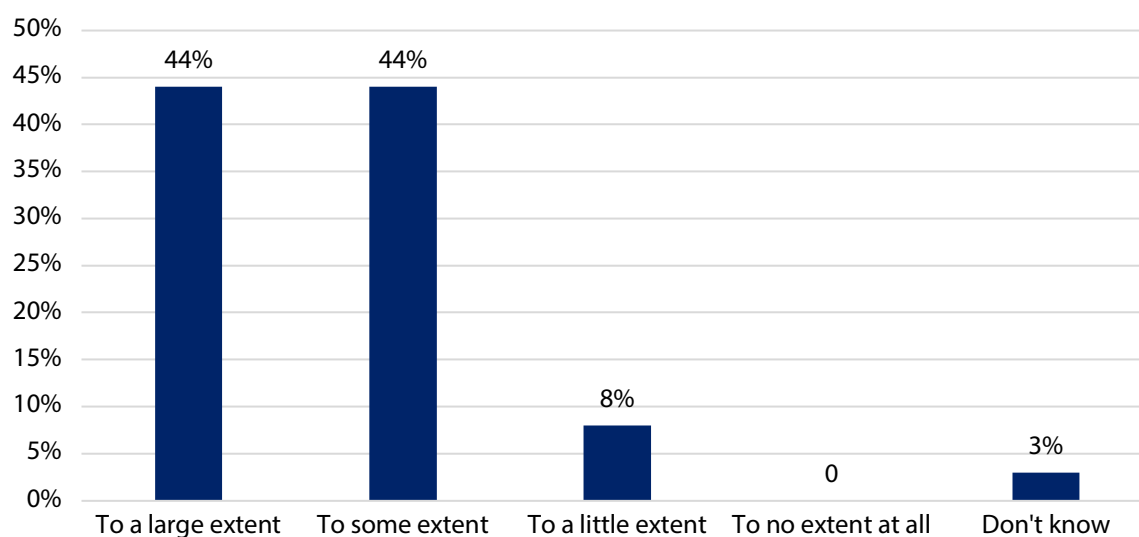
**Figure 3.7: Survey 2 – Has the Venice Commission contributed to significant reforms in your country?**



Source: Analysis of survey responses. N=55

This finding was also reflected in the feedback on a related question on how effective the Venice Commission has been in **contributing to substantial changes in legal practice in member states** since its foundation in 1990. In answer to this question, 42% of the Venice Commission member respondents said that the Venice Commission has been “very effective” in achieving its objectives with a further 55% arguing that it had been “quite effective”. The additional comments provided by Venice Commission beneficiaries in the second survey underlined the mixed picture. For example, one respondent argued that while “the Venice Commission has been instrumental in consolidating the authority, independence and credibility of the Constitutional Court, on the other hand, its positions on ethnic minorities have been largely disregarded.” Likewise, another respondent suggested that “Important recommendations are usually only offered after the act at issue is already adopted”. The views of Venice Commission members on a similar question were more positive. As can be seen from the chart below, the feedback was very positive with a significant proportion of Venice Commission members (44%) arguing that changes in legislation and legal practices relating to the rule of law were attributable to the Venice Commission “to a large extent”.

**Figure 3.8: Survey 1 – To what extent do you consider changes in legislation and legal practices relating to the rule of law in member states to be attributable to the work of the Venice Commission?**



Source: Analysis of survey responses

There was some interesting feedback to this question from Venice Commission members in the open responses. Some examples are summarised below.

**Box 3.2: Survey feedback on extent to which changes in legislation and legal practices relating to the rule of law in member states are attributable to the work of the Venice Commission**

- ▶ “Varies greatly by the country in question, which makes it hard to generalise.”
- ▶ “The objective opinions and authorised documents are very important to settle the domestic discussions of amendments and legal practices. Much of them may be charged by political and ideological stances. However, the Commission works should facilitate a sound direction to all these discussions.”
- ▶ “The Venice Commission is quite relevant, but we should be realistic as to the effectiveness of opinions that are not asked by the member states themselves.”
- ▶ “The Commission gives direction and specific recommendations – not all member states take up these recommendations in their entirety. Overall, however, the Venice Commission is respected and listened to, and this helps in the changes required being brought into effect.”
- ▶ “The answer to this question depends very much on which member states. For member states that are actively requesting opinions, there is a great impact. For member states not requesting opinions, typically the so-called established democracies, the impact is of course less and not direct. However, there are indirect impacts of the Commission’s work in these countries too, typically where the Commission’s opinions and reports are applied as international standards in domestic legal reforms.”

**3.2.2.1 Extent to which Venice Commission recommendations are accepted and implemented**

**Recommendations as provided by the Venice Commission in its opinions have been implemented to a varying extent across countries over the past few years.** According to data from the Venice Commission annual progress review reports, at least about 16% of the recommendations issued in 2019 and over 20% of the recommendations of 2020 are known to have been implemented to some extent in national legislation. The extent to which opinions and their individual recommendations are implemented is not specified. No reference is made to the remaining opinions issued in these years in the internal reporting documents, suggesting that implementation is either unknown, has not taken place yet or has not taken place to a meaningful extent. Given the limited follow-up on implementation and the likely existence of information gaps, the table below should be interpreted cautiously; it is based on the Venice Commission’s self-assessment in progress review reports only. The percentage of Venice Commission opinions’ implementation might be larger. The level of implementation by requesting entity is elaborated on later on in this section.

**Table 3.3: Reported implementation of Venice Commission recommendations by requesting entity 2018-2020**

| Year        | Number of opinions requested                               | Number/ Percentage of opinions reported as implemented <sup>70</sup>           |
|-------------|--|--|
| <b>2018</b> | Total: 30<br>▶ Council of Europe: 8<br>▶ Member states: 22 | Total: 8 (26.6%)<br>▶ Council of Europe: 4 (50%)<br>▶ Member states: 4 (18.2%) |
| <b>2019</b> | Total: 25<br>▶ Council of Europe: 7<br>▶ Member states: 18 | Total: 4 (16.0%)<br>▶ Council of Europe: 0 (0%)<br>▶ Member states: 4 (22.2%)  |
| <b>2020</b> | Total: 33<br>▶ Council of Europe: 8<br>▶ Member states: 25 | Total: 7 (21.2%)<br>▶ Council of Europe: 0 (0%)<br>▶ Member states: 7 (28%)    |

Source: CSES analysis based on progress review report by the Venice Commission 2018, Progress review report by the Venice Commission 2018, number of opinions based on Venice Commission website and annual activity reports

<sup>70</sup> As captured in the Venice Commission Progress review reports 2019 and 2020.

To take some examples, in Central and Eastern Europe, some Venice Commission opinions have been implemented, for example in Albania (the law on the finalisation of transitional ownership process adopted in May 2020 followed the 2019 opinion, and the Law on the Legislative Initiative of Voters adopted in July 2019 was in line with the 2018 opinion), North Macedonia (for example the law on courts adopted in May 2019 follows the 2018 opinion fully) and in Romania, where the Constitutional Court annulled criminal law provisions as suggested by the Venice Commission. In Republic of Moldova, amendments to the electoral legislation made in 2019 followed the Venice Commission opinions, and in Ukraine the Venice Commission recommendations led to the establishment of the High Anti-Corruption Court.

In Western Europe, Venice Commission recommendations have been followed in Malta, where the 2020 opinions resulted in legislative changes and the 2018 opinion in the introduction of the new State Advocate.<sup>71</sup> In some other countries in the region, other Venice Commission opinions issued since 2018 have not been reported as adopted, suggesting that the situation varies depending on the topic and the political sensitivity of the matter within countries themselves.

### Box 3.3: Examples of Venice Commission's recommendations implementation

In **Ukraine**, the Venice Commission has played an important role in various fields, helping the country bring its legislation into line with European standards.

- ▶ The **constitutional reform** was supported by the opinions and consultations of Venice Commission experts and the recommendations implemented to a large extent.
- ▶ Various (urgent) opinions have been issued in the context of the **judicial reform**, for example the opinion on the elective procedure for the High Council of Justice,<sup>72</sup> which interviewees highlighted had been followed to a great extent.
- ▶ The Venice Commission has contributed to the **ongoing electoral reforms** by providing technical expertise, for example with opinions on referendums, political parties and elections in conflict zones.

In **Republic of Moldova**, the Venice Commission has contributed to two tangible important situations.

- ▶ The **"constitutional crisis"** after the elections in 2019: the Venice Commission's opinion<sup>73</sup> advised caution in the interpretation of the constitution relating to the timelines for the forming of a new government and the dissolution of the previous one is seen as instrumental in the transition to a stable government.
- ▶ The **work related to the amendments of the constitution**: the Venice Commission's contributions through several opinions helped strengthen the judiciary and ultimately led to a stronger democracy in the country. As a result, the constitution offers more guarantees to judges, although the revisions are still ongoing.

In **Poland**, implementation of Venice Commission recommendations has been limited in the last years.

- ▶ The **polarisation of views on the opinions of the Venice Commission** and the institution itself can be rooted in the current political situation in the country as well as the sensitivity of the issues concerned.
- ▶ Despite being seen as a highly influential body, there is an **overall lack of implementation of the Venice Commission's recommendations**. Some changes were introduced in Poland that were aligned with the Venice Commission's recommendations, but the majority of laws examined remain in force with no changes that can be attributed to the opinions.

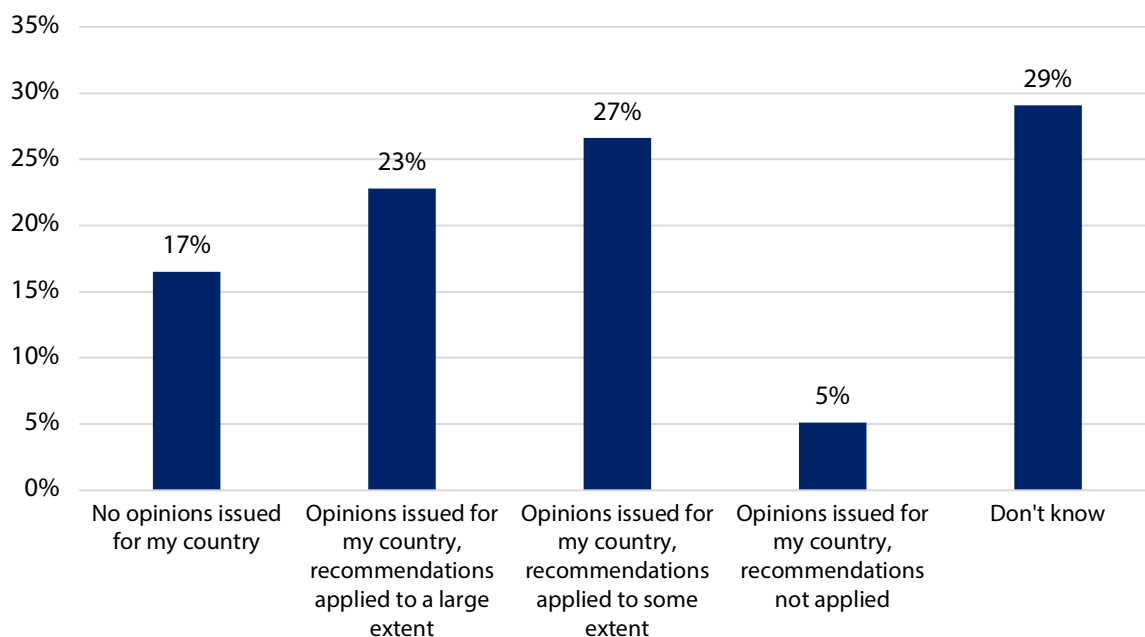
**Similarly differing views regarding the extent to which recommendations in the Venice Commission's opinions have been applied and implemented have been captured in the survey responses.** Venice Commission beneficiaries participating in the survey gave quite differing opinions regarding recommendations' implementation, as shown on the graph below.

<sup>71</sup> The Venice Commission, in its opinion on Malta of the 17th December 2018, had proposed the separation of the dual roles of the Attorney General. See more details on: Press release by the Ministry for Justice, Culture and Local Government. "Dr Victoria Buttigieg officially appointed as first State Advocate. Government services and information of Malta", 17th December 2019, available at [www.gov.mt/en/Government/DOI/Press%20Releases/Pages/2019/December/17/pr192670en.aspx](http://www.gov.mt/en/Government/DOI/Press%20Releases/Pages/2019/December/17/pr192670en.aspx).

<sup>72</sup> CDL-REF(2020)067.

<sup>73</sup> CDL-AD(2019)012.

**Figure 3.9: Survey 2 – In your country, and to the extent that you are aware, have the recommendations found in the Venice Commission’s opinions been applied and implemented?**



Source: Analysis of survey responses. N=79

**More generally, the extent to which the Venice Commission’s work, specifically in the case of opinions, has been implemented in member states and led to actual changes in legislation varies and is not always clear.** There is no systematic procedure used by the Venice Commission to monitor implementation of its recommendations apart from a brief update during the plenary sessions on a selection of opinions. There is generally support for the Venice Commission to conduct a more systematic follow-up of the implementation of opinions, as expressed by survey respondents and interviewees. More developed internal monitoring of the state of implementation of Venice Commission opinions, some argue, would improve the understanding of its effectiveness and long-term impact, quite apart from identifying instances where follow-up actions might be needed. It is suggested that this could be done for a selection of opinions if resources do not allow for a more extensive exercise (for example, it has been suggested that the focus could be on where the country itself requested the opinion). Rapporteurs involved in drafting the opinion could be best placed to take stock of implementation with the support of the Secretariat. However, it has also been argued that such follow-up activities could go beyond the Venice Commission’s mandate of providing legal and technical advice, and that it would be more appropriate for other Council of Europe bodies such as PACE and the Committee of Ministers to undertake such monitoring specifically and to a larger extent in relation to Venice Commission recommendations.

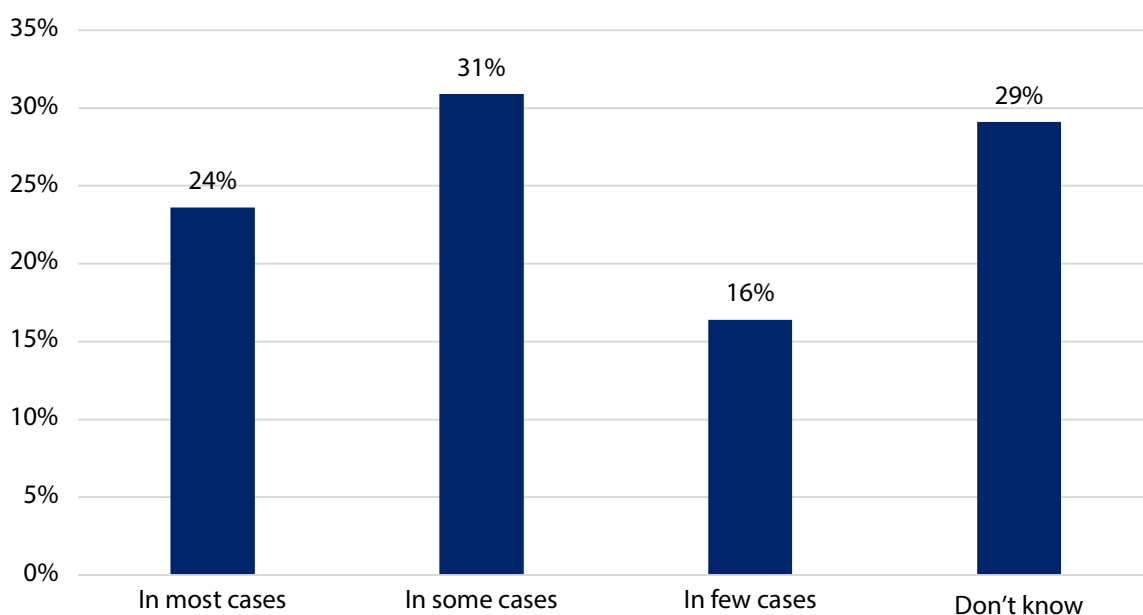
**The evidence suggests that the Venice Commission is most effective in influencing national legislation where national authorities request an opinion.** This reflects the fact that the Venice Commission modus operandi is based on “constructive dialogue” and co-operation and relies on the political willingness and readiness by the authorities to implement change. In addition, a higher degree of “ownership” of opinions is linked to those instances in which it is the member state itself requesting an opinion. As shown in Table 3.3 above, most of the opinions issued since 2018 and known to have been implemented to date were requested by the member state authorities. In those cases where an opinion was requested by one of the Council of Europe bodies, such as PACE, national stakeholders tend to be less receptive to the Venice Commission’s recommendations and there is a lower degree of implementation. This is partly due to an unwillingness in some countries to rely on external assistance and a preference to deal with legislative changes at the national level. Council of Europe requests for opinions often address very sensitive issues in countries which can explain resistance to the Venice Commission’s involvement. However, in the few cases where opinions have been requested by both PACE and the member state, this can lead to a high degree of implementation.

**Regarding implementation of best practices as recommended by the Venice Commission, the survey feedback did not provide any dominant view** with almost a third of the respondents saying they did not know (see chart below). A possible explanation for this is the challenges in tracking the contribution of general reports and studies to changes at a national level. Compared to opinions, which address a specific draft

law or situation in a given country, reports presenting best practices address more general topics and are not targeted at individual countries. This means that any implementation in practice requires adaptation to the national context. However, adaptations do not in many cases explicitly mention the Venice Commission. Hence, evidence of changes at national level stemming from Venice Commission recommended best practices is mainly linked to anecdotal examples from interviews. For example, Republic of Moldova introduced a Judicial Council following the Venice Commission recommendation which considered such a body to be appropriate method for guaranteeing judicial independence.<sup>74</sup>

The relatively high proportion of survey “don’t know” responses to this and the earlier question above on Venice Commission recommendations suggests that a priority for the future should be to communicate more effectively and raise awareness of Venice Commission activities in the member states, specifically with regard to the outcomes achieved. Although the communication of Venice Commission activities is not directly related nor does it necessarily lead to implementation of reforms by members states, as this is out of the Venice Commission’s control, the effect of communication efforts could still be measured.

**Figure 3.10: Survey 2 – In your country, to what extent were best practices applied as recommended by the Venice Commission?**



Source: Analysis of survey responses

### 3.2.3 What were the main factors influencing the achievement or non-achievement of the objectives?

The Venice Commission acts as the Council of Europe advisory body on constitutional matters.<sup>75</sup> As an advisory body, the recommendations issued by the Venice Commission are non-binding and, although on many occasions requested by the national authorities themselves, the extent of implementation is not determined by national authorities alone. However, certain factors contribute to the extent to which positive outcomes are achieved.

In addition to the qualitative feedback from interviews analysed above, in the survey, a question was asked on what the **main factors were that have influenced the Venice Commission’s achievement of its objectives**. Among the pre-coded response options, “Working method based on dialogue” topped the list (ranked first by 81% of the Venice Commission members), followed by “Institutional design and independence” (68%) and “Flexibility in engaging with national authorities” (61%). Other factors such as “Support and collaboration with international organisations” and “Support and collaboration with other Council of Europe entities” were ranked much lower. Perhaps rather surprisingly, “Geographical expansion beyond Europe” also fell into this category. There were also some additional factors mentioned in the open responses.

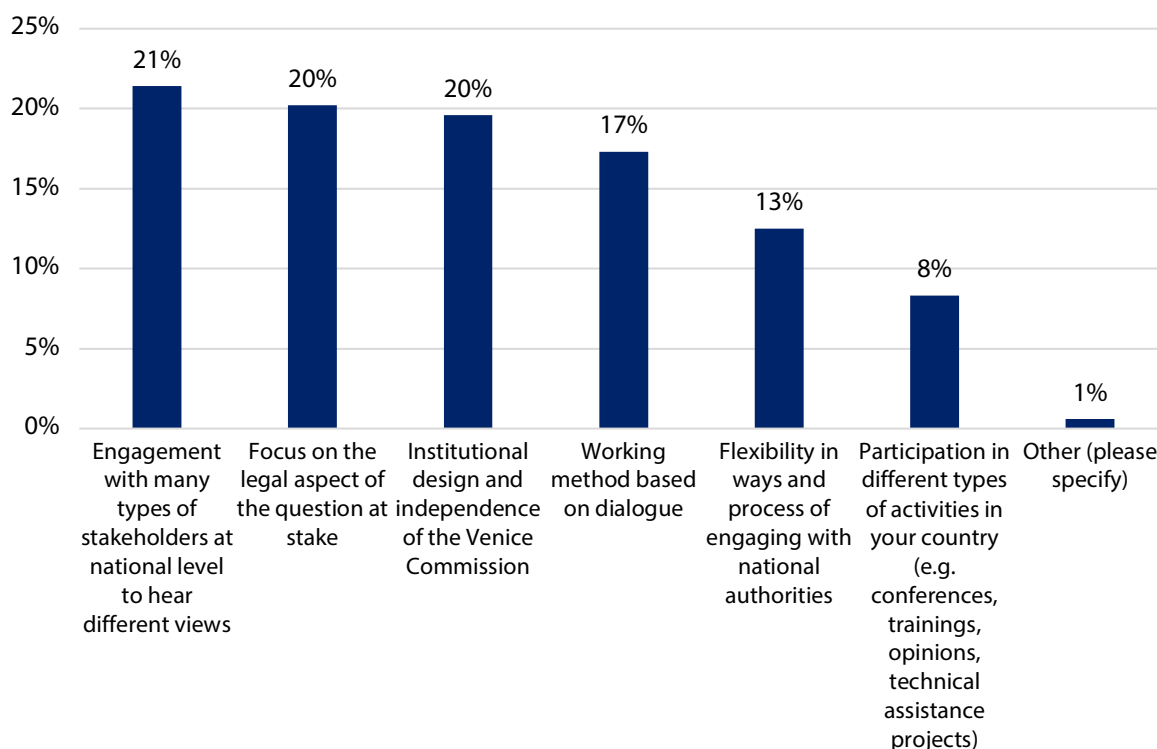
<sup>74</sup> CDL-AD(2007)028.

<sup>75</sup> P&B 2020-2021.

This included: the integrity and technical excellence of the Venice Commission’s individual members; the high quality of the opinions, reports, etc.; the support and collaboration with other international organisations such as the OSCE/ODIHR and the European Union; and the knowledge and diplomatic skills of the Venice Commission Secretariat and members.

There was rather different feedback to this question from surveyed Venice Commission beneficiaries with “Engagement with many different types of stakeholders” first ranked, followed closely by a “focus on legal aspects of issues” and the Venice Commission’s status as an independent institution. Perhaps not surprisingly, while Venice Commission members tended to focus on the Venice Commission’s expertise and working methods, responses from member states tended to put more emphasis on engagement with stakeholders and the Venice Commission’s status.

**Figure 3.11: Survey 2 - What do you think are the main factors influencing the Venice Commission’s achievement of its objectives in your country?**



Source: Analysis of survey responses. N=66

A related question for both surveys asked for opinions on the **factors that may have negatively affected the Venice Commission’s achievement of objectives**. In the case of Venice Commission members, the factor that stands out is “Reluctance of national authorities” (to adopt opinions) with “Lack of sufficient resources” second highest ranked. By comparison, other factors such as the Venice Commission’s geographical expansion were not seen as having negatively affected the achievement of objectives. In the open responses several interesting comments were made. The first was that “there is a trend in certain member states stressing their sovereignty to the detriment of rule of law standards, and strong unwillingness to accept international oversight and opinions”. This factor was also mentioned by another respondent who argued that “since the opinions are not binding, their impact is dependent upon support from other international organisations (for example the EU) and states if the national authorities are reluctant”. In the case of the survey to Venice Commission beneficiaries, the most important factor highlighted by the wider stakeholder group as having a negative effect on the Venice Commission’s achievement of its objectives was “Political opposition to the intervention of the Venice Commission” (50% of responses).

Venice Commission beneficiaries answering the survey questionnaire could not have been expected to comment on Venice Commission resourcing issues given their limited insights to internal Venice Commission matters (the second highest ranked factor in the Venice Commission members’ survey) but there was agreement on political opposition/the reluctance of national authorities to accept the Venice Commission’s opinions being the main problem.

**Figure 3.12: Survey 2 – What do you think are the main factors influencing the non-achievement by the Venice Commission of its objectives in your country?**



Source: Analysis of survey responses. N=60

**More generally, an important factor influencing the achievement of the Venice Commission’s objectives is its status as an independent body while benefiting from being part of the wider Council of Europe structure.**

As pointed out by interviewees and in the academic literature, “the institutional home within the Council of Europe is equally beneficial not only because the Commission could tap into Council of Europe institutional resources but also because the association means that the Venice Commission did not have to build its legitimacy from scratch”.<sup>76</sup> Indeed, the Venice Commission tapped into the membership of the Council of Europe to form the initial core of its own membership, expanding this as the Council of Europe admitted former Soviet republics and other countries during the 1990s.<sup>77</sup> As noted earlier, the Venice Commission helped to develop democratic regimes and well-functioning institutions based on the rule of law and in line with international democratic standards. Ever since, the Venice Commission has managed to maintain that initial concept and “is engaged in the legal discussion, but not in the political debate at both country and international levels”.<sup>78</sup>

**The Venice Commission’s independence and expertise of its members have contributed to establishing it as a credible, impartial and highly respected institution.** Members, often judges, prosecutors, professors of law or high-ranking officials, are nominated by their countries, but act in their individual capacity (Article 2 of the revised statute). The diversity of the Venice Commission’s membership means that it offers a wide range of expertise, nationalities and cultural understanding, thereby reflecting the diverse range of countries that support the Venice Commission, also contributing to the impartiality of its opinions and other outputs. The expertise and respected status of Venice Commission experts is highly valued by countries and is a key component in the overall “measured, legally-based, politically neutral approach” of the Venice Commission.<sup>79</sup> Although the context in which opinions are requested can often be highly political, the Venice Commission is generally perceived as being a neutral body that works with national authorities to provide the best possible solution to legal questions. The Venice Commission itself suggests that the political origin of a request does not, as the honorary President of the Venice Commission, Ms Hanna Suchocka, argues, “determine in any way the content of the substantive position taken by the Commission”.<sup>80</sup>

**Although the political context informs the drafting of the opinions, the content is formulated on a strictly objective legal basis and independently of any partisan positions.** The process of drafting the opinion is exactly the same regardless of country or the entity requesting it. In some cases there are quite polarised views

<sup>76</sup> Craig P. (2017). *Transnational Constitution-Making: The Contribution of the Venice Commission on Law and Democracy*, Indiana University Maurer School of Law, p.19.

<sup>77</sup> Ibid.

<sup>78</sup> A-L. Chané et al. (2016). *Fostering Human Rights among European Policies: EU engagement with other European regional organisations*.

<sup>79</sup> Anonymous quote shared via Survey 1 of this evaluation.

<sup>80</sup> A-L. Chané et al. (2016). *Fostering Human Rights among European Policies: EU engagement with other European regional organisations*, p. 54.

on the Venice Commission's objectivity with some arguing that it has not consulted widely enough to arrive at a truly balanced view on the situation in the country with regard to key questions such as the independence of the judiciary. It has been argued that there would be a benefit in further increasing the level of involvement of civil society and consult more widely as part of the process of producing an opinion. More scope for written inputs has been suggested as a way of achieving this.

In the case of opinions, through formal and informal channels, the Venice Commission engages with the authorities to exchange views and to understand the country-specific situation and best support with the existing needs. This involves a visit to the countries prior to the drafting of opinions during which the rapporteurs meet with the national authorities, judiciary, political parties, NGOs and others. These assessment trips, which generally last less than a week, are often complemented by follow-up meetings once opinions have been published so as to clarify any outstanding questions and further support their implementation.

**The Venice Commission's capacity to provide a timely response to requests for opinions and other support is seen as another strength that helps maximise effectiveness.** This is the case, for example, when a draft law needs to be reviewed at short notice to fit in with the procedure adopted by the national parliaments to introduce legislation. In addition to the formal procedures that Venice Commission missions involve, more informal channels such as letters, statements and phone calls with government representatives and officials in member states are used to help ensure effective communication prior to an opinion being produced. The quick response through letters and phone calls is appreciated by national authorities and seen as instrumental in influencing rapidly developing events at a national level. For example, the joint letter of the Venice Commission and Group of States against Corruption (GRECO) to the President of Ukraine related to the Constitutional Court and the fight against corruption<sup>81</sup> was perceived as highly relevant to address the issue, and the in-person participation of the President of the Venice Commission in meetings with the national authorities was described as being key in the subsequent implementation of the opinion. The ability of the Venice Commission to respond to requests quickly helps ensure that it can influence the situation in member states. It is worth noting that since the foundation, no request for an opinion has been declined by the Venice Commission.

**The Venice Commission's rules of procedure and working methods have been codified in various internal documents which set out the working methods that have been developed since January 2011.** These guidelines are described as "meant to be applied with a certain degree of flexibility";<sup>82</sup> the Venice Commission's rules of procedure were last amended in 2018 and now comprise seven pages. While some consultees highlighted the value of the in-built flexibility, others argued that there would be a benefit from having a higher degree of procedural formality that would not only increase clarity but also the clarity of the Venice Commission's proceedings. There is also, it is argued, a need to fill gaps.

For example, no details are disclosed on how the selection of rapporteurs for individual opinions takes place. The Venice Commission's regulations stipulate that they are appointed at the discretion of the Venice Commission President, and that the President of the Scientific Council and the Venice Commission members are to be informed, the latter "via regular Members' Updates".<sup>83</sup> The possibility for individual members to indicate their "interest in becoming a member of a particular working group, provided that he or she is in a position to actively participate within the relevant time frame"<sup>84</sup> also exists but the extent to which individual members' preferences are taken into account is unclear. Criteria established by the Secretariat in a 2018 note include specialisation in the topic, knowledge of the country and diversity of legal backgrounds in the team.<sup>85</sup> However, more clarity regarding the criteria and procedure for appointing rapporteurs could help increase the engagement of some of the less active members, add clarity for the benefit of all members, and ultimately strengthen the Venice Commission's credibility.

Furthermore, individual Venice Commission members are appointed by their respective countries and are required to "serve in their individual capacity and shall not receive or accept any instructions".<sup>86</sup> However, several interviewees suggested there have been cases where political interference at the national level had played a role in the appointment of some members, potentially compromising their true independence and leading to unsuitable appointments in terms of experience and expertise. This, it was argued, could pose challenges to

81 Source available at [www.venice.coe.int/files/2020\\_10\\_31\\_UKR\\_JointGRECOVeniceCommissionLetterSpeakerVerkhovnaRada.pdf](http://www.venice.coe.int/files/2020_10_31_UKR_JointGRECOVeniceCommissionLetterSpeakerVerkhovnaRada.pdf).

82 Venice Commission. (2010). *Guidelines relating to the working methods of the Venice Commission*.

83 Venice Commission. (2010). *Guidelines relating to the working method of the Venice Commission*, E. Preparation of opinions and studies, adopted by the Venice Commission at its 84th Plenary Session, Venice, 15-16 October 2010, p. 4.

84 Venice Commission. (2010). *Guidelines relating to the working method of the Venice Commission*, E. Preparation of opinions and studies, adopted by the Venice Commission at its 84th Plenary Session, Venice, 15-16 October 2010, p. 4.

85 See the note prepared by the Venice Commission Secretariat on the Criteria for the appointment of rapporteurs (CDL-WM(2018)001), available at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-WM\(2018\)001-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-WM(2018)001-e).

86 Revised statute Article 2.1.



an effective functioning of the Venice Commission. Changes in government leading to the termination of the mandate of individual Venice Commission members, although not advised, have been observed and could be a factor that also potentially damages the Venice Commission. The establishment of a Venice Commission committee responsible for approving the appointment of members and ensuring the highest standards of independence, emulating the process by which the European Court of Human Rights judges are appointed, has been suggested as a way of overcoming this challenge. Such a Venice Commission panel could share its recommendation confidentially with the relevant authorities. Recommendations would be non-binding, so as to respect the right of member states to exercise sovereignty and to appoint whoever they see fit.

Similarly, no criteria have been developed regarding the process for accepting a request for an opinion nor is there any formal guidance on the mandate, role and responsibilities of the Venice Commission's Bureau in one consolidated document.<sup>87</sup> The internal workings of the Venice Commission are explored in more detail in the Efficiency section.

**Although the Venice Commission's opinions carry a lot of weight in their own right, the fact that they are used by the European Commission in its dealings with EU member states and other countries is also an important factor in promoting the Venice Commission's effectiveness.** It has been suggested that Venice Commission opinions are, in some cases, despite being officially soft law in nature, hard law in practice. In some cases, this is because a country may have aspirations to become an EU member state or could indeed be in the process of negotiations to join. In effect, the EU and international institutions such as the IMF and the World Bank rely on the Venice Commission opinions as an important part of "conditionality" in political and financial negotiations. Countries bound by such requirements, often in the context of EU accession negotiations, are under pressure to accept and implement Venice Commission opinions as not doing so can negatively affect the prospects of EU membership and/or the financial support they receive. This latter point also applies to many countries outside the EU, for example those receiving EU Macro Finance Assistance where "conditionality" clauses are built into funding agreements (for example Georgia and Ukraine).

#### **Box 3.4: Co-operation with international organisations – the case of the European Union**

As key strategic institutional, financial and legal partner of the Venice Commission is the **European Union**<sup>88</sup>. Since the signature of the Memorandum of Understanding between the EU and the Council of Europe in 2007,<sup>89</sup> both partners have continued to strengthen their co-operation along three main pillars: **political dialogue, legal co-operation and programmatic co-operation.**

- ▶ From an operational perspective, the Venice Commission-EU co-operation has taken the form of **exchanges of views, practical advice and legal co-operation with the agencies and institutions of the EU.** It is customary for the Venice Commission to provide input to the ongoing EU efforts to support reforms in some of its member states, whereas the EU systematically invites countries to follow the recommendations issued.<sup>90</sup> Interactions take place with the European Commission (for example, help with the rule of law report and Review Cycle and co-operation with the Legal Services), the European Council (strengthening of synergies of EU foreign policy with the Political and Security Committee), the European Parliament and its committees<sup>91</sup> (for example, in the form of reference to the Venice Commission's work in country-specific resolutions), the European Committee of the Regions and other EU institutions.<sup>92</sup>
- ▶ In addition, the **standards** developed by the Venice Commission on a range of topics are taken into consideration and adopted by the EU, be it in the form of general statements (for example, the Code of Good Practice in Electoral Matters of 2002 and the Rule of Law Checklist of 2016), or with reference to a specific country, such as in the case of EU candidate countries.
- ▶ On the other hand, co-operation external to the EU is built on the implementation of **joint programmes** between the EU and the Council of Europe in several countries (for example, the Horizontal Facility, the Partnership for Good Governance and the South Programme),<sup>93</sup> with the EU remaining the largest donor to the Council of Europe technical co-operation activities in which the Venice Commission also takes part.

87 Reference to the mandate of the Bureau is provided across different documents, for example the Protocol on the preparation of urgent opinions (CDL-AD(2018)019).

88 Article 2 (6) of the [Resolution \(2002\) 3](#) of the Committee of Ministers of the Council of Europe.

89 [Mémorandum d'accord CE\\_UE anglais.PDF \(coe.int\)](#).

90 Annual report of activities 2020.

91 Council of Europe (2021). Summary report on co-operation between the Council of Europe and the European Union, 131st Session of the Committee of Ministers, CM(2021)25-final.

92 For example, representatives of the European Union Agency for Fundamental Rights, the Legal Service and DG Justice, the European External Action Service as well as from the Committee of the Regions participated in the plenary sessions of the Venice Commission in 2016.

93 For the purpose of this evaluation, EU-Council of Europe Joint Programmes are discussed under the thematic area Technical co-operation and Case study 4.

Overall, the support and co-operation with international organisations such as the OSCE/ODIHR and OAS is seen as contributing to the effectiveness of the Venice Commission due to the mutually reinforcing role. Speaking with one voice on topics of shared interest (for example joint opinions and reports) reinforces the positions of the Venice Commission in the wider international context. Joint opinions and reports are, for example, issued with the OSCE/ODIHR in the electoral field. Co-organised events between the Venice Commission and the OSCE/ODIHR, OAS and other international bodies increases the visibility of all those involved. The signing of a Memorandum of Understanding (MoU) between the Venice Commission and OAS in 2021 and, more indirectly, the references to the Venice Commission in the strategic priorities of the EU-Council of Europe relationship based on the 2007 MoU are seen as strengthening the strategic dimension of the co-operation. Exchanges of views and informal communication take place among institutions in areas of shared interest.

Some survey respondents suggested that co-operation with other international organisations should be further developed to help create the best environment for national authorities to implement the opinions. As a survey respondent commented, “there is still a wide gap between the importance of the Venice Commission in the international arena regarding respect [for] the rule of law and democracy and its scarce knowledge among the national opinions of European countries”.

Technical assistance projects are also seen as helping to strengthen the likely implementation of recommendations. They create the framework for close co-operation with the Venice Commission and help develop trust among the parties involved. For example, in Ukraine, technical assistance has been used to increase participation of local organisations in events such as conferences and forums, which is seen as an opportunity to explain Venice Commission recommendations and together define follow-up activities for implementation. In the case of the Partnership for Good Governance, the QRM is seen as well-functioning, fast-acting mechanism which serves as channel for financial support, strengthening the work of the Venice Commission. Opinions issued through this mechanism are funded by the project budget granted by the Council of Europe and the EU.

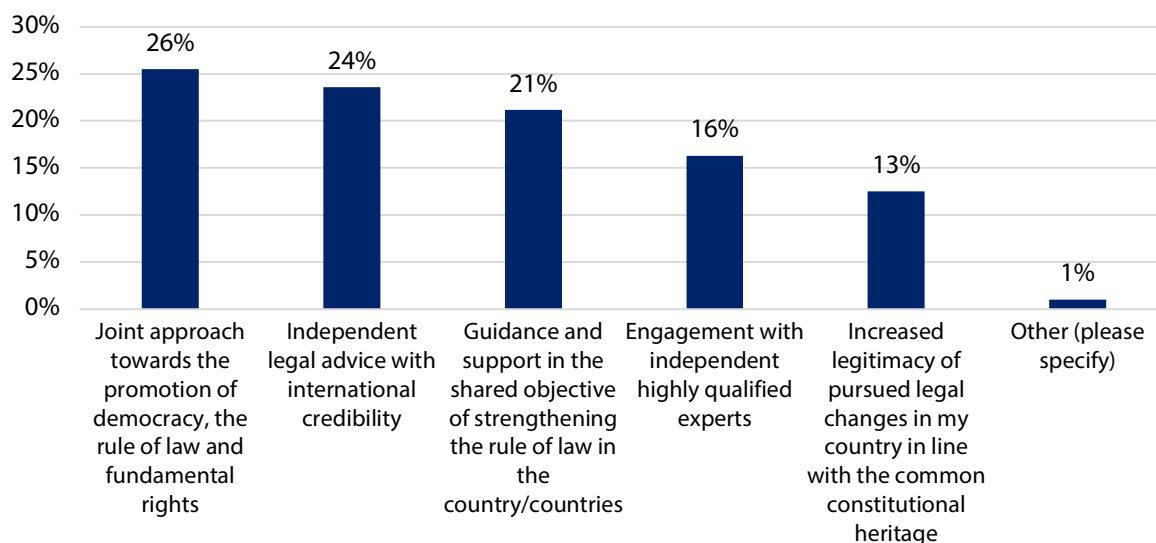
**Box 3.5: Example – “Supporting constitutional and legal reforms, constitutional justice and assisting the Verkhovna Rada in conducting reforms aimed at enhancing its efficiency”**

- ▶ The Venice Commission project “Supporting constitutional and legal reforms, constitutional justice and assisting the Verkhovna Rada in conducting reforms aimed at enhancing its efficiency” covers three main areas of work: i) constitutional reform; ii) electoral reform; and iii) assistance to the Verkhovna Rada (Ukrainian parliament). The main partners are the Verkhovna Rada and its different committees, the Supreme Court, the Electoral Commission and local civil society organisations.
- ▶ The project comprises activities often co-organised with civil society organisations as well as opinions requested in the scope of the project. The project framework allows for flexibility to balance the number of activities with the number of opinions requested in a given year to respond to the most pressing needs in the country. As such, the project has covered, on the one hand, the organisation of activities in which the Venice Commission members participate as experts – for example, seminars on the Rule of Law Checklist in Ukraine – together with assistance to individual entities such as the Supreme Court. This has been followed up by disseminating the work of the Venice Commission more broadly, for example with the publication of the methodological handbook “Rule of Law Checklist for Ukraine” in Ukrainian and English and with the collection of all publications and brochures made during phase one of the project on electoral legislation reform, which were sent to 100 libraries for easy access to the wider civil society. On the other hand, the project has covered activities related to individual opinions such as the translation of legislation needed for drafting of opinions, the preparation of the fact-finding missions to the country and other arrangements for the Venice Commission delegation visiting.
- ▶ All partners expressed their satisfaction with the co-operation with the Venice Commission and highlighted its valuable input in regard to European standards and the common constitutional heritage. As an example, they highlighted the assistance of the Venice Commission in moving some training to an online platform at the beginning of the Covid-19 pandemic, which made it possible for participants to receive their training remotely.

The benefits perceived by national authorities in their co-operation with the Venice Commission are a further element contributing to its effectiveness. In the survey to Venice Commission members, a number of benefits of collaboration with the Venice Commission were highlighted, “Joint approach towards the promotion of democracy, the rule of law and fundamental rights” and “Independent legal advice with international credibility” being the two most highly ranked. As one respondent argued, “The Venice Commission becomes

more and more one of the main standard setters for the rule of law and has long left its original role of being a purely advisory body”.

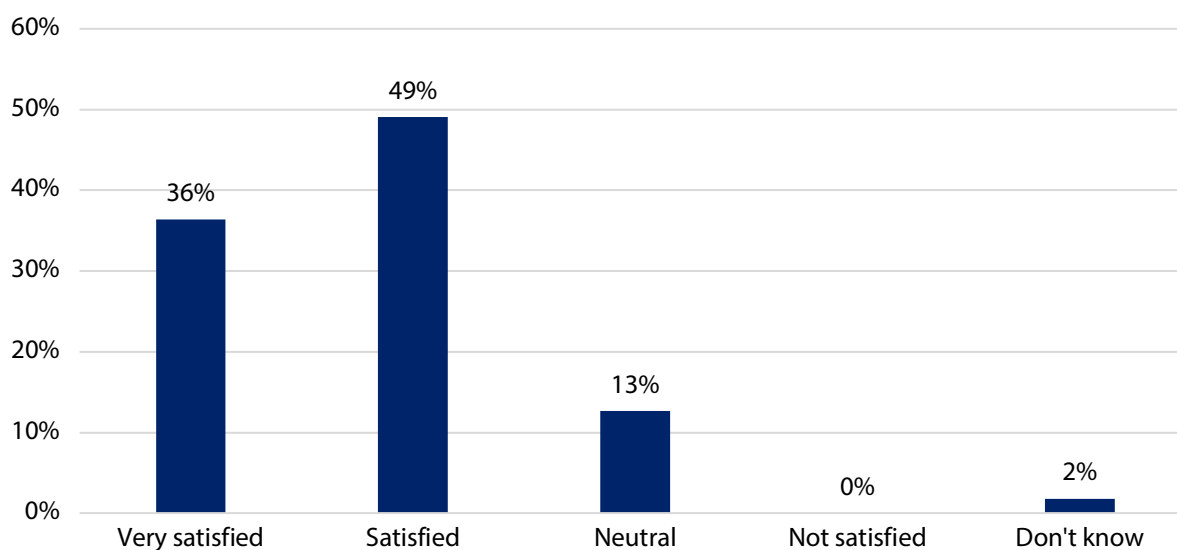
**Figure 3.13: Survey 2 – What is the value in collaborating with the Venice Commission?**



Source: Analysis of survey responses. N=79

In general, there is a high level of satisfaction with the interactions with the Venice Commission.

**Figure 3.14: Survey 2 – What is your level of satisfaction with the co-operation work with the Venice Commission?**



Source: Analysis of survey responses.

**National authorities were satisfied with the collaboration with the Venice Commission, particularly when it was ongoing and based on mutual trust.** Especially in countries such as Ukraine and Republic of Moldova, where the Venice Commission has issued a large number of opinions over the years, in many cases requested by the authorities themselves, national authorities value the collaboration with the Venice Commission. In particular, the opinions and the participation of experts in events and high-level exchanges of views with the authorities are perceived as supporting ongoing reforms. Elsewhere, in Mexico, for example, where the collaboration focuses mainly on electoral issues, the view of local partners is that the Venice Commission provided legal expertise and technical guidelines in a field dominated by a lack of international standards. In Tunisia, national stakeholders suggested that the opinions that were brought forward by the Venice Commission had a positive effect on the constitutional reforms undertaken during the transition towards democracy, including in areas related to electoral reform and administrative justice.

**Inevitably, some national authorities are reluctant for political or ideological reasons to accept Venice Commission opinions, or indeed for all intents and purposes choose not to do so.** In some instances, this makes it difficult for the Venice Commission to be effective in improving the democratic functioning of institutions in a country. For example, the opinion on the Education Law in Ukraine (reviewed as part of Case study 1) was not fully implemented in other cases, there has simply been a lack of political will to act on the Venice Commission's recommendations.

**In addition, as mentioned before, the type of entity requesting a Venice Commission opinion can also be a factor influencing whether or not they are accepted and fully implemented.** Especially in cases where opinions are requested by a third party, often PACE, the recommendations issued by the Venice Commission are sometimes not universally well received. Opinions requested by Council of Europe bodies, as opposed to member states, can be perceived as coming from an "external" source with less ownership by national authorities. Conversely, opinions requested by member states authorities almost by definition imply a readiness and willingness to engage on a specific topic, and to accept the Venice Commission's expertise and views on a subject. Survey respondents also pointed this out, highlighting the often more controversial and sensitive nature of the requests coming from international and Council of Europe bodies.

Furthermore, some interviewees and survey respondents argued that national authorities have sometimes tried to use the Venice Commission opinions to legitimise their actions, disregarding recommendations that are not in line with their interests. This implies that requests for opinions are at times not driven by a genuine desire to improve a piece of legislation and rather aim to provide support for specific, political objectives. However, national authorities mentioning this risk of the political use of the Venice Commission also highlighted the professionalism of the Secretariat and their ability to manage such situations.

The greater likelihood of national authorities implementing the Venice Commission's recommendations when they request legal advice themselves can be understood as being the reason for entities such as the EU or the Secretary General of the Council of Europe preferring that it is the member states that do so. This is reflected in the limited number of opinions requested by either of these two bodies over time: of the over 600 opinions produced since 1990, a total of 175 requests came from the Council of Europe (with 15 of these from the Secretary General, 2.2% of the overall total); just four requests came from the EU (0.6% of all opinions). It should be noted that in some instances, the member states have requested a Venice Commission opinion immediately after the Council of Europe body had done so, suggesting a fear of potential reputational damage. Therefore, member states themselves often also prefer to be the ones requesting an opinion.

**Even in cases where there is a willingness to formally implement the Venice Commission's opinions, the degree of implementation depends on wider societal factors.** This includes the capacity to implement measures needed to give effect to Venice Commission opinions.<sup>94</sup> Especially in those cases where substantive changes are recommended, these are likely to require time and the involvement of different national and international players. Besides, political instability and frequent changes in government can also complicate the implementation of Venice Commission recommendations. Linked to this, another barrier to the full implementation of Venice Commission recommendations can sometimes lie in their incompatibility with the constitutional provisions in member states. Several interviewees noted that some recommendations issued by the Venice Commission were not possible to implement from a constitutional perspective. This was acknowledged in some opinions while in others such incongruences only became apparent later. Some of the interviewed Venice Commission members were of the view that recommendations were suggested in line with the common constitutional heritage and could at times require further constitutional amendments to be fully implemented, pointing out that acknowledging such instances in the opinion itself would indeed be beneficial and provide further clarity.

**As noted earlier, the Covid-19 pandemic has also affected Venice Commission activities. Some activities had to be cancelled or moved online in 2020 and 2021.** Pre-electoral and electoral assistance were particularly negatively affected as elections were cancelled or postponed, and travel restrictions imposed to fight against the pandemic prevented electoral observation missions from taking place. The Venice Commission managed to partially overcome this problem by offering online assistance, for example on the organisation of elections during states of emergency.<sup>95</sup> Additionally, the slowdown in activities of constitutional courts resulted in a temporary lower level of co-operation also with the Venice Commission.

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<sup>94</sup> Craig P. (2017). *Transnational Constitution-Making: The Contribution of the Venice Commission on Law and Democracy*, Indiana University Maurer School of Law.

<sup>95</sup> Progress review report Venice Commission 2021.

### 3.2.4 To what extent has the Venice Commission's effectiveness been facilitated by support from other areas of the Council of Europe?

As an independent body regulated by an Enlarged Partial Agreement, the Venice Commission acts autonomously within the Council of Europe with its own working methods. As part of the wider Council of Europe set-up, its effectiveness has been facilitated to a varying extent by the Council of Europe over time.

**In the early days of the Venice Commission, other Council of Europe bodies helped to promote its effectiveness by referencing its work. This continued to be the case as the Venice Commission strengthened its position as a relevant body.** References to the work of the Venice Commission by the Parliamentary Assembly, the Congress of Local and Regional Authorities of Europe and other bodies have raised the visibility of the Venice Commission and increased its effectiveness by incorporating some of its conclusions and recommendations in their own documents. According to the Venice Commission website, as at January 2021, around 1 250 documents of the Parliamentary Assembly referred to the Venice Commission's work, calling on the member states to co-operate or to implement its recommendations.<sup>96</sup> The topics included the "Urgent need to prevent human rights violations during peaceful protests" (Report no. 14060 (2016)), the "Rights and obligations of NGOs assisting refugees and migrants in Europe" (Resolution 2356 (2020)) and the "Progress of the Assembly's monitoring procedure" (January-December 2020) concerning developments in member states.

In addition, from the Council of Europe side, representatives of the Committee of Ministers, the Parliamentary Assembly and the Congress of Local and Regional Authorities of Europe are invited to attend the plenary sessions of the Venice Commission (Article 2 of the statute), facilitating knowledge sharing across the Council of Europe bodies.

The **European Court of Human Rights** has further helped to raise the profile and strengthen the credibility of the Venice Commission by making references to its documents and by informing its interpretation of the exact scope of some rights and freedoms. Around 250 judgments and decisions of the Court are estimated to have referred to Venice Commission documents between 2001 and February 2021.<sup>97</sup> Examples are provided on the Venice Commission website. In addition, the **Commissioner of Human Rights**, whose role is complementary to that of the Venice Commission,<sup>98</sup> has references to the Venice Commission in its annual activity reports, country visit reports and issue papers. Similarly, the **Congress of Local and Regional Authorities** has quoted the Venice Commission opinions and reports in, among others, its activity reports, recommendations and resolutions, especially in the field of elections. The "Codes of Good Practice in Electoral Matters" and "Referendums and the report on the Respect for Democracy, Human Rights and the Rule of Law during States of Emergency" are among the Venice Commission documents most frequently cited.

**In recent years, the support of other Council of Europe areas and bodies has increasingly taken the form of joint opinions and other joint outputs.** The publication of joint opinions with other Council of Europe bodies such as GRECO, the DGI and the Directorate General of Democracy (DGII) indicate alignment not only with the Council of Europe objectives overall but also with the objectives and expertise of its individual bodies. Since its foundation, the Venice Commission has issued 31 joint opinions with DGI and one with DGII, all of them in the period from 2004 onwards. The increasingly common practice of issuing joint opinions especially in the last five years was highly welcomed by interviewees from both the Venice Commission and the Council of Europe alike.

When involved in drafting Venice Commission opinions, between one and four experts from the relevant Council of Europe body and department (for example the DGI/Directorate of Human Resources (DHR) Media Co-operation Unit, DGI Cybercrime Division and DGI/DHR Human Rights National Implementation Division) act as additional rapporteurs. On some occasions, also members and former members of the Consultative Council of European Judges have acted as experts in the drafting of a thematically relevant opinions. Council of Europe external experts have also acted as experts in opinions produced under the ordinary procedure, for example for Ukraine and Hungary.

Some interviewees and national authorities were of the view that **the lack of co-ordination between Venice Commission opinions and technical reports by other Council of Europe entities** has at times resulted in differing positions and contradictory opinions being expressed on the same matter. As a result, the Council of Europe has been perceived at times as not speaking with one voice, which has had a negative impact on the effectiveness

<sup>96</sup> Source available at [www.venice.coe.int/WebForms/pages/?p=02\\_references&lang=EN#PACE](http://www.venice.coe.int/WebForms/pages/?p=02_references&lang=EN#PACE).

<sup>97</sup> Ibid.

<sup>98</sup> The Commissioner provides an analysis on the broader context of the rule of law and human rights in a given country whereas the Venice Commission looks into specific issues more in-depth.

of the Venice Commission and possibly also of the Council of Europe as a whole. In that regard, joint opinions could contribute to strengthening co-ordination and to aligning internal positions on specific matters.

**Synergies are also visible with technical assistance projects and events where overlapping or closely related topics are addressed together in joint events.** For example, the Venice Commission technical assistance project in Ukraine and other Council of Europe projects implemented in the country such as “Supporting the transparency, inclusiveness and integrity of electoral practice in Ukraine”, “Strengthening Freedom of Media and Establishing a Public Broadcasting System in Ukraine” and other projects in the framework of the action plan for Ukraine often rely on the same expertise and organise joint events. One example of the synergies between the Venice Commission and other areas of the Council of Europe is the South Programme (supported by the EU), which is designed to provide institutional support to the countries in the Southern Mediterranean region. This activity aligns with the Venice Commission’s UniDem project which organises workshops aimed at promoting administrative reform aid to decentralise public administrations.

**Several Council of Europe technical assistance programmes such as the Partnership for Good Governance (PGG II) and the South Programme (SP III) also include a mechanism through which countries can request the legal expertise of the Venice Commission.** In the PGG, this is called the QRM. The Venice Commission’s legal assistance is used as an additional component in the negotiation of country-specific action plans and in the individual project design phase. Findings suggest there has been an increase in requests for opinions in Council of Europe projects. This seems to also be the case with the implementation of projects by the Venice Commission and by Venice Commission staff in the relevant field offices. For example, in Ukraine, the Venice Commission project implemented by the Council of Europe office in Kyiv, which supports events and the provision of legal expertise in the form of opinions, is considered to have been important in bringing stability, continuity and a direct channel of communication between the Venice Commission and the Ukrainian authorities.

### **Box 3.6: Technical assistance projects – The example of the PGG QRM**

#### *Overview*

- ▶ The Partnership for Good Governance programme (PGG) is a joint programme by the Council of Europe and the EU providing tailored support to Eastern Partnership countries (Armenia, Azerbaijan, Belarus, Georgia, Republic of Moldova, Ukraine) to bring national legislation and practice closer to European standards in the field of human rights, democracy and the rule of law. Building on the first phase of PGG (2014–2018), the second phase was launched in 2019.
- ▶ To enable the provision of fast, targeted legal advice on judiciary matters on an ad hoc basis, the PGG provides for the use of a QRM tool, which responds to requests for legislative analysis and related assistance from the Eastern Partnership countries. Examples of opinions requested through the QRM mechanism in the Eastern Partnership countries include, but are not limited to:
  - amicus curiae brief for the Constitutional Court of Armenia relating to Article 300.1 of the Criminal Code, adopted by the Venice Commission by written procedure replacing the 123rd Plenary Session (**Armenia, 2020**);<sup>99</sup>
  - urgent opinion on the selection and appointment of Supreme Court judges, endorsed by the Venice Commission at its 119th Plenary (**Georgia, 2019**);<sup>100</sup>
  - opinion on the draft law amending some normative acts relating to the People’s Advocate, adopted by the Venice Commission at its 126th Plenary Session (**Republic of Moldova, 2021**);<sup>101</sup>
  - amicus curiae brief on draft law 10257 on the early termination of a Deputy’s mandate, adopted by the Venice Commission at its 121st Plenary Session (**Ukraine, 2019**).<sup>102</sup>

#### *Main findings*

- ▶ The QRM is a tool that can be considered to be effective, as demonstrated by the fact that it has been renewed once and is undergoing negotiations for a third triennium. The fact that the QRM has not undergone significant changes throughout these renewals may be an indication that its current format works well and is considered as a valuable channel for technical assistance.

99 CDL-AD(2020)005-e.

100 CDL-AD(2019)009-e.

101 CDL-AD(2021)017-e.

102 CDL-AD(2019)029-e.

- ▶ Moreover, interviewees consulted in the scope of this evaluation suggested that the increase in the frequency of requests for the use of the QRM was a further demonstration of the tool's effectiveness. A reason for the increased use of the QRM by partner countries among Eastern Partnership countries was the fact that the Venice Commission itself was increasingly better known through the PGG.
- ▶ An example of a QRM activity that had a positive effect on Armenia's justice and home affairs discussions concerning equal rights was the opinion it expressed concerning the implications that adopting the Istanbul Convention would have on Armenia's constitution, which clarified the scope of the debate and reduced some of the concerns about the convention that some sections of society expressed.

**In the field of electoral observation missions, a formal agreement with PACE in 2004 established that the Venice Commission would take part as a legal councillor in its election observation missions providing legal expertise.**<sup>103</sup> In 2018 alone, such missions were carried out to Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Montenegro, the Republic of North Macedonia and Turkey with the participation of Venice Commission experts. In addition, the Venice Commission has provided assistance to electoral commissions in several countries, including Albania, Armenia, Georgia, Republic of Moldova and Ukraine.

### **Box 3.7: The role of the Venice Commission in electoral observation missions**

- ▶ In electoral observation missions, the Venice Commission's role is to provide legal advice to PACE. Before country visits, the delegations have a closed-door meeting where the Venice Commission experts provide information on the context and potentially sensitive issues concerning the current electoral legal framework of the country. In this setting, members of PACE can put questions to the Venice Commission.
- ▶ On pre-election observation and electoral observations missions, the Venice Commission accompanies PACE and provides input into the report published after the delegation's visit. As part of the missions, the delegation meets with other international observers, political parties, electoral bodies, members of the media and groups in civil society to inform their reports. In the case of Republic of Moldova and Turkey, individuals interviewed indicated that the Venice Commission spoke to a broad enough range of stakeholders. During such meetings, stakeholders present can ask questions to the Venice Commission on previous opinions relevant to the elections occurring.
- ▶ During the observation mission itself, the Venice Commission and PACE observe the voting procedure and ballot counting. The Venice Commission observers are able to verify whether national legislation is being applied in practice. As stressed in Venice Commission election guidelines, at this stage, the purpose is not to assess whether the country has appropriate laws in line with international standards but to assess whether the existing laws are being implemented as written.
- ▶ Prior to the drafting of the report on the election observation, meetings are held between the Venice Commission and PACE to discuss observations made on polling day. The report prepared contains an evaluation of the polling on election day as well as the political context which makes reference to previous Venice Commission opinions on election issues. Representatives from the Central Electoral Commission (CEC) from Republic of Moldova indicated that the report produced from the election observation is useful in highlighting gaps and issues to be rectified in both the election that has occurred and the political context underpinning the election. On the other hand, despite legitimacy of the Venice Commission, whether national authorities adopt recommendations made by the CEC on the basis of Venice Commission opinions depends on the interest of political parties in parliament.
- ▶ In the case of Turkey, subject of Case study 3, PACE members have argued that while authorities are reluctant to change their electoral systems in line with Venice Commission opinions, the meetings held as part of these observations allow for a channel of discussion which opens the possibility for small change over time. Furthermore, Venice Commission members interviewed added that the Venice Commission has a credible reputation when it comes to electoral matters which allows PACE to cite Venice Commission opinions and observations in discussions with national authorities.

**Although support from Council of Europe bodies for the work of the Venice Commission takes many forms, as outlined above, it has been suggested that there is room for closer collaboration and improved co-ordination.** This would help to more closely integrate the Venice Commission into the wider Council of Europe set-up, also

<sup>103</sup> Venice Commission Website, Seminars, training workshops and assistance missions, available at [www.venice.coe.int/WebForms/pages/?p=02\\_seminars&lang=EN](http://www.venice.coe.int/WebForms/pages/?p=02_seminars&lang=EN).

beyond the regular co-ordination taking place within the framework of DGI, of which the Venice Commission is part, thereby potentially further enhancing its effectiveness. There is potential to further develop the links across Council of Europe entities in a more formal way in an effort to add clarity to potential thematic synergies and to share knowledge on the work being done in countries to ensure consistency of the recommendations. Exchanges of views and information among the leadership of the different Council of Europe bodies take place on an informal basis, usually ad hoc and at the initiative of the Council of Europe or the Venice Commission, and on a more formal basis at least once a year at a meeting organised by the Secretary General.

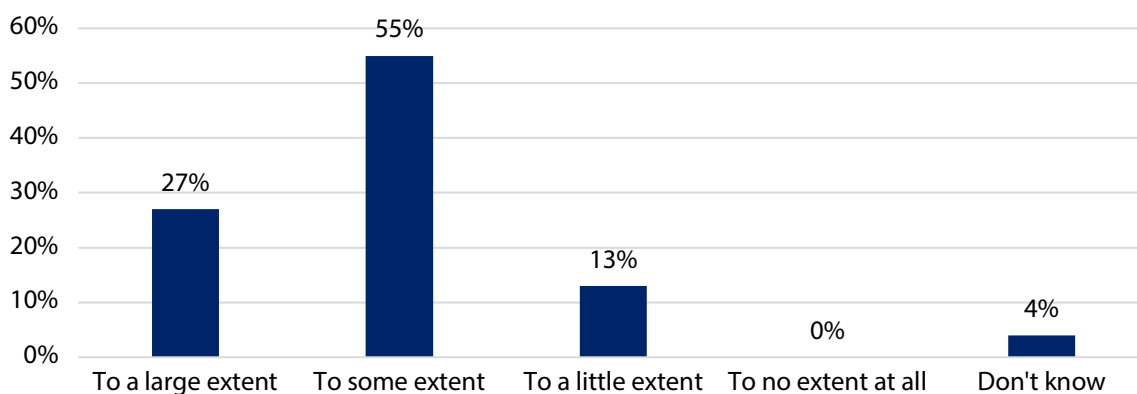
One area where closer co-operation could take place is the translation of key Venice Commission texts to other languages so as to increase its awareness and visibility. The Council of Europe has translators and interpreters that are used for Venice Commission’s interventions, for instance, to translate case law from national courts into English or French to add to the CODICES database. Some interviewees suggested this collaboration should be further developed to translate key Venice Commission interventions such as opinions, especially when the country concerned is reluctant to initiate legal changes. In addition, a wider availability of Venice Commission texts in a few languages such as Spanish could help overcome language barriers and contribute to further increasing the Venice Commission’s visibility. This is the case for example in Latin America, where neither English nor French are as widely spoken as in Europe. Making some texts available in Spanish could help make the Venice Commission’s work more widely known and contribute to increasing awareness among legal circles and the broader population alike.

### 3.2.5 To what extent has the Venice Commission been effective in communicating its actions within the Council of Europe and externally?

The Venice Commission is considered to have considerably increased its effectiveness in communicating its actions externally since this aspect of its activities has been managed centrally through the Council of Europe’s Department of Communications (DC). Externally, the Venice Commission website is the main communication tool. Internally, the Venice Commission mainly relies on e-mail communication to reach its members and its activities are also publicised by the Council of Europe’s news brief on a daily basis. Given the Venice Commission’s legal focus, having the DC manage its media relations helps to make coverage more accessible according to those that were consulted. There was generally positive feedback on the role played by the DC which is seen as efficient in responding quickly to requests for information. This is also the case for urgent opinions, which do not follow the standard procedure and are adopted in between plenary sessions. Also in these instances, the DC was perceived as being helpful to journalists following the developments.

The Venice Commission beneficiaries survey provided feedback on the Venice Commission’s external communications issues – the perspective of member states is the most important aspect in this respect. As can be seen from the chart below, there was somewhat ambivalent feedback with over two thirds of respondents’ opinions falling into the middle categories and saying that the Venice Commission was only effective to “some extent” or “a little extent”.

**Figure 3.15: Survey 2 – To what extent has the Venice Commission been effective in communicating its actions externally?**



Source: Analysis of survey responses. N=67

The Venice Commission’s website is seen by most respondents (61%) as the most effective way of communicating externally, followed by press statements to the media and the newsletter (ranked equally).



Among the Venice Commission members responding to the survey on **how effectively the Venice Commission communicates its actions**, there was a higher degree of agreement with regard to “internal” communication with almost all Venice Commission members saying that this was either “very effective” (46%) or “quite effective” (51%).

More generally, findings suggest there is some scope to improve procedures, for example, by having clearer internal timelines regarding when an opinion is expected to be published. In addition, a streamlined process for the approval of a press release, drafted by the DC and to be approved by the Venice Commission Secretariat once the opinion is finalised, would allow the speeding up of their publication and increase their relevance as well as the chances of being picked up by the media. Close co-ordination would also benefit the effective dissemination of joint opinions, for example those produced together with the OSCE/ODHIR. As each entity publishes the opinion – and when relevant the accompanying press release – separately, an increasing level of co-ordination would allow the avoidance of those instances in which both entities send the press release to the same journalists, thereby closing the joint effort all the way through dissemination of the opinion. Conversely, potential joint press releases are likely to delay the dissemination of an opinion due to differences in internal procedures among entities and would possibly add complexity without substantial benefits.

**In its early days, the Venice Commission made substantial efforts in its external communication to establish its position as an independent legal authority.** References to its work by other international and national entities, such as the European Court of Human Rights, Council of Europe bodies and national authorities, contributed to strengthening its visibility in the international arena. This has helped it to become well-known in legal circles and in the international field over the years.<sup>104</sup> Its visibility is also enhanced by the publicity given to its activities by other organisations ranging from civil society organisations to opposition parties who through their activities often highlight the work of the Venice Commission.

**Externally, the Venice Commission uses its website as an important way of communicating with member states and other interested parties.**<sup>105</sup> The website provides updates on recent, current and upcoming events, including requests for opinions and meetings. It also provides a repository of key documents published by the Venice Commission (studies and opinions) organised by the main thematic areas. The website content is available in five languages. The “For the media” section provides an overview of the way the Venice Commission works, mainly related to opinions. Feedback from journalists consulted as part of the research for this evaluation indicates that many of them use the website as their main source of information about the Venice Commission, relying primarily on the news section. However, some argued that the Venice Commission website was not very intuitive to navigate and would benefit from an update. A search engine was further suggested to facilitate the navigation given the large number of countries and Venice Commission activities.

**The visibility of the Venice Commission is strongly linked to its opinions, and therefore results in varying degrees of coverage reflecting the geographical distribution of opinions.** Coverage and media visibility of the Venice Commission varies to a considerable extent between Eastern and Western European countries. The former, having requested the assistance of the Venice Commission more often over time, tend to have a greater coverage of the Venice Commission activities in national media. Conversely, media in other regions such as Western Europe rarely report on the Venice Commission’s work, which is therefore less known outside of those legal circles.

Beyond raising awareness of events (conferences, round tables and seminars, etc.) as an active way of providing external visibility, it is argued that the Venice Commission could do more to raise awareness of other activities, including studies and guidelines. For example, the e-Bulletin on Constitutional Case-Law and the CODICES database are seen as very valuable outputs, yet not as widely known. In addition, providing greater visibility to the newsletter, issued four times a year since 2007 and available on its website, would be an effective way of improving coverage of Venice Commission work. Many interviewees we consulted were not aware of the newsletter. Simplifying the process of signing up on the website by, for example, installing an automated mailbox in which those interested could insert an e-mail address to confirm the subscription would be a more efficient system for both users and the Venice Commission itself.

**Of all the Venice Commission’s activities, it is the plenary sessions in Venice that tend to receive the most attention from the media.** The fact that the plenary sessions take place partially during a weekend (Friday and Saturday) and are closed to the public was highlighted as being a complication in giving media coverage to opinions, at least in a timely manner. Once the opinions are adopted, they are published on the Venice Commission website, usually the following week. Journalists interviewed appreciated the press releases, and

<sup>104</sup> Source available at [www.venice.coe.int/WebForms/pages/?p=02\\_references&lang=EN](http://www.venice.coe.int/WebForms/pages/?p=02_references&lang=EN).

<sup>105</sup> See the Venice Commission website: [www.venice.coe.int/WebForms/pages/?p=01\\_Presentation&lang=EN](http://www.venice.coe.int/WebForms/pages/?p=01_Presentation&lang=EN).

civil society organisations highlighted their value, especially in situations where Venice Commission opinions are unlikely to have balanced coverage in the national media.

In light of these findings, more emphasis on the **communication strategy for the Venice Commission** should be considered. The successful implementation of such a strategy, either in partnership with the Council of Europe Department for Communication or, if resources allowed, by the Venice Commission itself, would contribute to increasing its visibility and further raise awareness of its work. Internal consideration would need to be given to the prioritised target groups: these could be legal circles or target also the wider population, be centred around regions in which the Venice Commission is most active (for example Central and Eastern Europe) or aim to cover those in which it is less known (for example Western Europe), and focus on selected type of activities (for example opinions) or instead aim to increase the coverage given to other outputs such as reports and events. The prioritisation of target audiences would help define the most effective outreach methods, which could include, for example, producing a larger number of press releases to accompany technical opinions in specific regions.

Furthermore, making **additional documentation on Venice Commission technical assistance projects publicly available would enhance their visibility**. There would be room for technical assistance projects to increase their information availability especially in terms of reporting in line with the Council of Europe Office of the Directorate General of Programmes communication guidelines. This would contribute towards additional transparency of project objectives and achievements and bring Venice Commission project reporting further in line with the Council of Europe standards.

**Internally, the focus is on communicating with Venice Commission members and with the other Council of Europe bodies.** With Venice Commission experts, communication takes place mainly via e-mail. For example, the “Information sheet” shared with the prospective rapporteurs containing the background documents in advance of an opinion is shared via e-mail.<sup>106</sup> However, among the Venice Commission members themselves, some expressed the view that there is scope to improve communication and to update more frequently the Bureau, the Enlarged Bureau and the Working groups on developments more generally. This could possibly take place in a more informal way and in addition to the “Members’ Update”, the information bulletin produced by the Secretariat four times a year between sessions containing topical developments, opinion requests and main activities. This would, it is argued, facilitate the engagement of experts and improve transparency generally. In relation to other Council of Europe bodies, several representatives are invited to the Venice Commission plenary sessions. More generally, there appears to be a good level of internal communication and visibility of the Venice Commission’s activities.

### 3.3 Efficiency of the Venice Commission

*Efficiency can be defined as the extent to which the outputs have been delivered in a timely manner to achieve the intervention purpose. A related issue is to what extent alternative working methods could have led to the achievement of comparable or better results with fewer resources or whether the same resources could have achieved increased outcomes.*

**The Venice Commission is regarded as an institution that operates efficiently, especially given its limited resources.** Despite its relatively small budget, it has been able to consistently deliver high-quality outputs within short time frames and has continued to do so despite the increasing number of opinions. Nevertheless, the evaluation suggests some ways in which the already efficient functioning of the Venice Commission could further be improved with the aim of ensuring sustainable operations in the future.

There was generally very positive survey feedback on how efficiently the Venice Commission functions as an entity with the overwhelming majority of Venice Commission members participating saying it does so “very efficiently” (57%) or “quite efficiently” (42%).

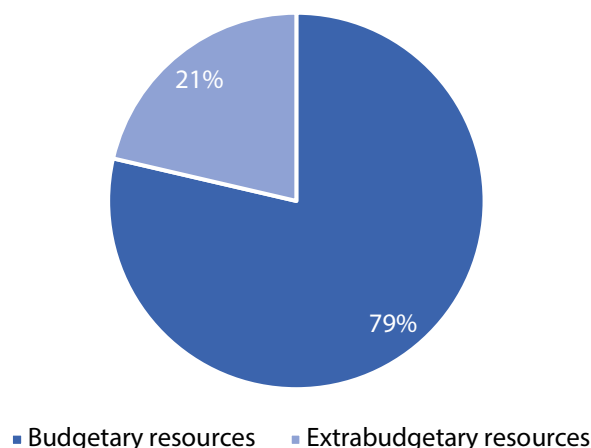
#### 3.3.1 To what extent are Venice Commission’s activities cost-effective?

**The Venice Commission is funded by the Enlarged Agreement budget and through extra-budgetary resources.** Membership contributions in the form of the “budgetary resources” cover staff (the Venice Commission Secretariat) and non-staff expenses. The extra-budgetary resources are mostly provided by the EU and are primarily used to support co-operation and technical assistance programmes in line with the Council of Europe action plans for individual countries. To a smaller extent, extra-budgetary resources are also used

<sup>106</sup> The format of the “Information sheet” is provided in the *Guidelines relating to the Working Methods of the Venice Commission*, CDL-AD(2010)034.

to respond to urgent member states' requests regarding constitutional justice reforms, the reform of electoral legislation and practice, and support for new democratic institutions. In addition, voluntary contributions for development activities in specific countries are made in the form of bilateral contributions by member states. The figure below shows the distribution of funding for the year 2021 in percentage terms.

**Figure 3.16: Venice Commission resources available for 2021 (in €k)**



Source: Council of Europe Programme and Budget 2020-2021

As shown in Table 3.4, the financial resources available to the Venice Commission have remained relatively stable over the years, despite the increasing number of its activities. Member state contributions are regulated in the Venice Commission statute.<sup>107</sup> The modest increase in Venice Commission membership (two additional members since 2016) has not translated into a significant increase in its budgetary resources. One reason for this might be, as representatives of some countries indicated, that their national authorities have struggled to contribute on an annual basis, often resulting in payment delays.

**Table 3.4: Venice Commission Financial resources (2016-2020)**

| Year | Budgetary resources available – staff (in €k) | Budgetary resources available – non-staff (in €k) | Total budgetary resources (in €k) | Extra-budgetary resources (in €k) | Total (in €k) |
|------|---|---|-----------------------------------|-----------------------------------|---------------|
| 2016 | 2 888.5                                       | 1 462.4   | 4 350.9                           | 1 239.1                           | 5 590.0       |
| 2017 | 2 888.5                                       | 1 462.4   | 4 352.9                           | 1 150.7                           | 5 503.6       |
| 2018 | 2 880.4                                       | 1 206.3   | 4 352.9                           | 436.5                             | 4 789.4       |
| 2019 | 2 931.2                                       | 1 155.5   | 4 086.7                           | 160.0                             | 4 246.7       |
| 2020 | 3 099.0                                       | 1 125.0   | 4 224.0                           | 1 532.0                           | 5 756.0       |
| 2021 | 3 159.0                                       | 1 154.0   | 4 279.3                           | 1 557.5                           | 5 836.8       |

Source: Council of Europe Programme and Budget 2016-2017, 2018-2019, 2020-2021; Adjusted budgets 2017, 2019, 2021

The nature of the Venice Commission's activities means that purely a quantitative assessment of efficiency is not appropriate. This is because although the financial inputs can be quantified, the outcomes that can be attributed to the Venice Commission cannot, except in extremely simplistic terms (for example, the number of opinions). For illustration purposes, the table below outlines the evolution of the ratio budget/number of produced outputs from 2016 to 2020 to provide the average cost per output in a given year.<sup>108</sup> These estimations provide a high-level picture of the trend but should be treated indicatively, as the resources required for producing different types of Venice Commission outputs vary (for example, more resources are needed to produce an urgent opinion than for the co-organisation of an event, and different timelines apply to urgent opinions and to ordinary opinions).<sup>109</sup>

<sup>107</sup> For example, Article 6b stipulates that “the rate of contribution of a non-member state of the Council of Europe to the Enlarged Agreement Budget shall be one third of its contribution as calculated in accordance with the rules for Council of Europe member states; however, it shall not be higher than one third of the contribution by the major contributors.”

<sup>108</sup> The year 2021 is not included in Table 3.5 as no total number of produced outputs was available at the time of conducting this evaluation.

<sup>109</sup> No disaggregated data is available to estimate the evolution of costs per type of outputs.

As shown in the table, the average cost per output has steadily decreased over time, meaning that fewer resources were used and/or available per output delivered. The year 2020 constitutes the exception to this trend, most likely caused by the impact of the Covid-19 pandemic on the Venice Commission's activities. This trend has further translated into an increasing pressure on the Venice Commission members and the Venice Commission Secretariat to deliver outputs of the same quality standards. On this basis, findings suggest that the Venice Commission is an efficient institution but that it will almost certainly need additional resources if it is to continue delivering its large workload while maintaining high quality.

**Table 3.5: Venice Commission Evolution of the ratio budget/number of outputs (2016-2020)**

| Year | Total number of produced outputs | Total budget (in €K) | Average cost per output (in €K) |
|------|----------------------------------|----------------------|---------------------------------|
| 2016 | 100                              | 5 590.0              | 55.9                            |
| 2017 | 129                              | 5 503.6              | 42.7                            |
| 2018 | 115                              | 4 789.4              | 41.6                            |
| 2019 | 108                              | 4 246.7              | 39.3                            |
| 2020 | 104                              | 5 756.0              | 55.3                            |

Source: CSES own elaboration based on Council of Europe Programme and Budget 2016-2017, 2018-2019, 2020-2021 and Progress review report from the Venice Commission 2016, 2017, 2018, 2019 and 2020.

As for individual activities, **Venice Commission opinions are considered very cost-effective given the limited funding needed to produce them.** The time needed for the investigations and drafting of an opinion is covered with a modest allowance for each Venice Commission rapporteur involved. This is at times supported through a technical assistance project and, in other instances, is covered by the Venice Commission budget. The Venice Commission Secretariat staff member responsible for the opinion oversees the process and puts together the final draft opinion. Non-staff financial resources include the travel and subsistence costs of the fact-finding mission for the Venice Commission delegation as well as any additional costs such as the translation of legislation and interpretation during meetings. Funding for individual opinions is allocated on a case-by-case and ad hoc basis. Additional (virtual) meetings in the final stages of drafting the opinion between the Secretariat member responsible and the rapporteurs could reduce the workload on the Secretariat by engaging the rapporteurs more closely in producing the final text. In addition, the delegation process concerning the internal quality assurance of all opinions could be enhanced. This would free up some time for the Venice Commission Secretary, who currently undertakes the revisions and who is already engaged with many other responsibilities.

**Within the PGG II, the QRM allows the Venice Commission to provide opinions to the Eastern Partnership countries under the project's funds.** This constitutes an additional stream of funding for opinions outside the Venice Commission's main budget and promoted the increased reach of the Venice Commission through additional opinions as requested by the countries. In the three-year period between 2019 and 2021, the QRM allocation amounted to a total of €939 000, funded by the EU (80%) and the (20%).<sup>110</sup> Those interviewed argued that opinions were a very valuable element of the wider PGG assistance and produced in a cost-effective way, especially considering their high quality. Similarly, the Venice Commission assistance to the Southern Mediterranean countries through the South Programme III (SPIII C3) consists mainly of opinions and is seen as a valuable, cost-effective contribution to the countries involved. The Venice Commission component is covered by the EU (90%) and the Council of Europe (10%) and amounted to a total of €497 000 for the two-year period between March 2018 to February 2020.<sup>111</sup> Also in this case, limited publicly available project documentation outlining planned activities suggest that a flexible approach is used to adapt to the on-demand needs of individual countries.

Table 3.6 provides an overview of the allocation to the Venice Commission component within selected wider Council of Europe projects under the rule of law-based institutions programme as well as the funding by the EU and the Council of Europe respectively.

<sup>110</sup> P&B 2020-2021, p. 180. As indicated in the P&B, the total amount is split over several programmes and amounts are indicative.

<sup>111</sup> P&B 2020-2021, p. 180.

**Table 3.6: Overview of budget for Venice Commission activities under selected EU-Council of Europe Joint Programmes**

| Programme name   | Start and end date  | EU contribution (in €k) | Council of Europe contribution (in €k) | Total amount (in €k) |
|--|---------------------|-------------------------|--|----------------------|
| PGG II: Quick Response Mechanism   | 1/1/2019-31/12/2021 | 751 (80%)               | 188 (20%)                              | 939                  |
| Horizontal Facility II: Expertise Co-ordination Mechanism                        | 24/5/2019-23/5/2022 | 850 (85%)               | 150 (15%)                              | 1,000                |
| SPIII C3 – Venice Commission's assistance to countries of Southern Mediterranean | 1/3/2018-29/2/2020  | 447 (90%)               | 50 (10%)                               | 497                  |

Source: Council of Europe Programme and Budget 2020-2021

**As for country-specific projects implemented by the Venice Commission, these are seen as demonstrating good value for money.** The budgets for country-specific projects are generally between €200 000 and €500 000 over two or three years and cover opinions as well as other activities as needed. Multilateral projects, on the other hand, have larger budgets to cover several countries. Interviewees considered this to be a very cost-effective approach and highlighted the benefit of such projects in helping to develop close co-operation between a country and the Venice Commission and to create the framework for a trust-based Venice Commission assistance. Indeed, several interviewees pointed out these to be modest projects in size from a Council of Europe perspective, suggesting that funds are mainly intended to cover opinions on specific thematic areas. Although some stakeholders expressed an interest in more Venice Commission in-country activities, this would be likely to require the Venice Commission to scale up projects to dedicate some additional resources to such activities.

Table 3.7 highlights a selection of country-specific and multilateral Venice Commission projects as examples.

**Table 3.7: Overview of selected Venice Commission technical assistance projects funded by the voluntary contributions budget**

| Programme name   | Start and end date  | Programme type   | Country    | Total amount € |
|--|---------------------|------------------|------------|----------------|
| Compliance with international standards in the electoral field   | 1/1/2014-31/12/2016 | Country-specific | Azerbaijan | 1 775          |
| Supporting constitutional and legal reforms, constitutional justice and assisting the Verkhovna Rada in conducting reforms aimed at enhancing its efficiency – Phase 1 | 1/4/2018-31/3/2020  | Country-specific | Ukraine    | 366 011        |
| Supporting constitutional and legal reforms, constitutional justice and assisting the Verkhovna Rada in conducting reforms aimed at enhancing its efficiency – Phase 2 | 1/4/2020-1/12/2021  | Country-specific | Ukraine    | 400 000        |
| Strengthening the rule of law and democracy in Morocco   | 1/3/2019-31/12/2021 | Country-specific | Morocco    | 129 500        |
| Venice Commission action to promote the development of democratic institutions based on respect for the rule of law and human rights                                   | 1/1/2019-31/12/2023 | Multilateral     | Various    | 1 102 075      |
| Venice Commission co-operation in the electoral field  | 1/5/2019-31/12/2019 | Multilateral     | Various    | 100 000        |

Source: Council of Europe Programme and Budget 2020-2021

**The budgets for individual activities covered under these projects, such as events (conferences, round tables, training, etc.), and the preparation and printing of publications are decided on a case-by-case basis.** This approach differs from the standard project management approach by the Council of Europe, which is

generally based on a detailed budget, and suggests that project activities are very much linked to the opinions issued or expected to be issued. As Venice Commission activity funds need to be balanced with funds dedicated to issuing opinions, the activity work plan is prepared on a trimester basis and adjusted as and when needed. Although this approach raises questions about the most efficient use of resources given the short-term planning timelines and balancing the demands of different countries, there was generally positive feedback on the approach adopted. The good collaboration established with civil society organisations, for example, means that Venice Commission experts are often invited to events organised and covered by partner institutions, which increases the Venice Commission's reach and visibility without affecting its budget.

**The implementation of technical assistance projects is seen by some as relying too much on the Venice Commission's own staff and could benefit from being supported more closely by the wider Council of Europe organisation.** The Venice Commission's staff is mainly located in Strasbourg with a relatively small number of staff working in the Council of Europe field offices in member states. As a result, the implementation of technical assistance projects is done mostly on a remote basis by the Venice Commission staff in Strasbourg with limited support in the field. Additional resources in the field would help project implementation and would take some of the workload off the HQ-based staff themselves (for example by engaging additional local staff). The Council of Europe PMM, it has been suggested, could be further embedded into Venice Commission projects.

**As for other Venice Commission activities, the costs for all four plenary sessions are covered by the Italian authorities (venue, interpretation services, etc.) and are estimated to be €60 000 p.a.** Venice Commission members interviewed favoured the plenary sessions continuing to take place in Venice and emphasised the value in meeting in-person for networking and forming relationships. Since 2019, the constitutional case law bulletins have been issued only in electronic version, which has reduced the costs.

The need for additional funding for the Venice Commission if it is to sustain, let alone increase, its activities, was brought to the attention of the Committee of Ministers in the context of the Venice Commission's 2020 annual report in September 2021. It seems there was a positive response from member states to the request for increase in contributions.

### **3.3.2 To what extent is the amount of time allocated for specific activities of the Venice Commission appropriate for the quality expected?**

Despite the very short timescales for some activities, the Venice Commission has generally been able to deliver high-quality technical expertise on complex and sensitive issues in a timely manner. Some interviewees suggested that this is one of the Venice Commission's main strengths and a reason for its credibility and authority.

**Opinions are generally produced in two to three months, depending on when they are requested, the urgency of the matter to be reviewed and the time until the next plenary session.** Within the ordinary procedure, an opinion is usually drafted by a team of two to five rapporteurs in the period leading up to a plenary session when it is then formally adopted and made public. The Venice Commission and the national authorities usually agree on the precise timing based on their respective commitments and priorities.

**Less time is dedicated to urgent opinions, usually between two weeks and one month.**<sup>112</sup> This reflects the "need for the Commission to be sufficiently flexible to cater to specific needs of domestic timelines, whenever it is not feasible or would be prejudicial to await formal adoption at one of the Commission's four Plenary Sessions".<sup>113</sup> Once a request for an urgent opinion is accepted by the Bureau, the timeline is agreed for an opinion to be exceptionally dealt with on an urgent basis prior to the next plenary session.<sup>114</sup> On average, there are three to four rapporteurs working on one urgent opinion. This is also the case for opinions issued under the QRM and other similar legal assistance channels for Council of Europe projects through which the Venice Commission offers its expertise.

**The time dedicated to other types of Venice Commission activities such as drafting of reports and the organisation of events varies on a case-by-case basis.** For reports and other types of studies, the average time between a request and adoption of the report is between six months and one year. Typically, there will be three to four rapporteurs, at times supported by contributions from experts from other Council of Europe bodies such as GRECO, DGI or DGII. Depending on the topic, the timeline and the number of rapporteurs

<sup>112</sup> The procedure for the preparation of urgent opinions is detailed in the Protocol on the Preparation of urgent opinions, endorsed by the Venice Commission at its 116<sup>th</sup> Plenary Session, Venice, 19-20 October 2018.

<sup>113</sup> Venice Commission. (2018). Protocol on the preparation of the urgent opinions, endorsed by the Venice Commission at its 116<sup>th</sup> Plenary Session, Venice, 19-20 October 2018.

<sup>114</sup> Ibid., Article 7.

involved can be considerably higher. For example, the “Rule of Law Checklist” was drafted by nine rapporteurs and was adopted over three years.<sup>115</sup> Similarly, the report “Democratic Oversight of the Security Services” was drafted by six rapporteurs in 2007 and revised by the same six experts for an updated version in 2015.

**Contributions by Venice Commission experts to electoral observation missions by PACE are regulated by its rules of procedure and Article 15 of the Co-operation Agreement between PACE and the Venice Commission.**<sup>116</sup> The Election Evaluation Guide (CDL-AD(2006)021) provides instructions and general principles for observers to follow. In accordance with the rules of procedure, one or more Venice Commission members can be invited to participate in PACE’s election observation missions to provide legal advice to the country involved (usually, one or two Venice Commission experts take part).<sup>117</sup> The resulting budgetary implications therefore vary, depending on the country, the number of days and number of Venice Commission members involved.

The following table summarises the timescales for Venice Commission activities.

**Table 3.8: Overview of time allocated by Venice Commission activity**

| Type of activity                    | Description of activity  | Time allocated   | Number of staff   |
|-------------------------------------|--|--|---|
| <b>Ordinary opinions</b>            | <ul style="list-style-type: none"> <li>▶ Usually drafted until the next plenary session, including exchange of views with stakeholders during the fact-finding mission</li> <li>▶ Presented at the plenary session for comments and adoption</li> </ul>  | <ul style="list-style-type: none"> <li>▶ Two to three months</li> </ul>  | <ul style="list-style-type: none"> <li>▶ One or more rapporteurs, 118 usually two to five rapporteurs</li> <li>▶ At times also external experts, staff from the OSCE/ODIHR or Council of Europe DGI or DGII</li> <li>▶ Once Venice Commission Secretariat member responsible for the opinion</li> </ul>   |
| <b>Urgent opinion<sup>119</sup></b> | <ul style="list-style-type: none"> <li>▶ Issued and published prior to its consideration by the Commission at a Plenary Session due to its urgency. No exchange of views with stakeholders nor comments from Venice Commission members are possible</li> <li>▶ Presented at the plenary session for comments and adoption</li> </ul> | <ul style="list-style-type: none"> <li>▶ Usually two weeks to one month depending on urgency/ local context</li> </ul> | <ul style="list-style-type: none"> <li>▶ Four to five rapporteurs</li> <li>▶ At times external experts, staff from the OSCE/ODIHR or Council of Europe DGI or DGII</li> <li>▶ One Secretariat member responsible for the opinion</li> <li>▶ If requested through a Venice Commission technical assistance project, one or two project staff are involved</li> </ul> |
| <b>Report, studies, guidelines</b>  | <ul style="list-style-type: none"> <li>▶ Documents of different sort outlining international standards in a specific field</li> <li>▶ Presented at the plenary session for comments and adoption</li> </ul>  | <ul style="list-style-type: none"> <li>▶ Usually between six months and one year, at times longer</li> </ul>           | <ul style="list-style-type: none"> <li>▶ Two to five rapporteurs, usually three</li> <li>▶ At times external experts, staff of OSCE/ ODIHR or Council of Europe DGI or DGII</li> <li>▶ One Secretariat member responsible for the opinion</li> </ul>  |

<sup>115</sup> CDL-AD(2016)007-e.

<sup>116</sup> Parliamentary Assembly Rules of Procedure of the Assembly (November 2021), available at [http://assembly.coe.int/nw/xml/RoP/RoP-XML2HTML-EN.asp?id=ENToc\\_NOA29C3B0N1404FFA0](http://assembly.coe.int/nw/xml/RoP/RoP-XML2HTML-EN.asp?id=ENToc_NOA29C3B0N1404FFA0).

<sup>117</sup> In assessing an election on polling day, the election guidelines indicate that observers are required to assess whether legislation is being applied in practice rather than just assessing whether the laws are appropriate and in line with international standards. At other times, the rules of procedure indicate that the observation must consider not just the day of the election, but all of the electoral process that underpins the election. In doing so, the rules of procedure indicate that observers need to assess “the quality and predictability of the electoral legislation”, and in doing so, consider legal opinions issued by the Venice Commission on legislation governing the electoral process.

<sup>118</sup> Revised statute Article 14.1.

<sup>119</sup> A similar procedure is followed for preliminary opinions, as these are also issued on an urgent basis. By contrast, however, these are sent on a preliminary basis before its adoption by the Venice Commission to the government/institution which sought the opinion on confidential terms and only later disclosed to the wider public. See: [CDL-WM\(2017\)002-e](http://www.venicecommission.org/en/CDL-WM(2017)002-e).

| Type of activity               | Description of activity   | Time allocated   | Number of staff  |
|--------------------------------|---|--|--|
| Events                         | <ul style="list-style-type: none"> <li>▶ Conferences, seminars, round tables, training sessions</li> </ul>  | <ul style="list-style-type: none"> <li>▶ Varied</li> </ul> | <ul style="list-style-type: none"> <li>▶ Number of Venice Commission experts involved varies</li> <li>▶ Number of members of the Venice Commission Secretariat involved varies</li> <li>▶ At times organised as part of a Venice Commission technical assistance project, number of staff involved varies</li> </ul> |
| Electoral observation missions | <ul style="list-style-type: none"> <li>▶ Observation of elections to assist partner countries in holding elections in line with Council of Europe standards</li> </ul>  | <ul style="list-style-type: none"> <li>▶ n/a</li> </ul>    | <ul style="list-style-type: none"> <li>▶ One or more representatives of the Venice Commission act as legal advisers</li> <li>▶ Members of the Venice Commission Secretariat</li> </ul>   |
| Databases                      | <ul style="list-style-type: none"> <li>▶ CODICES</li> <li>▶ VOTA</li> </ul>   | <ul style="list-style-type: none"> <li>▶ n/a</li> </ul>    | <ul style="list-style-type: none"> <li>▶ The CODICES Database is managed by the Venice Commission Secretariat</li> <li>▶ The VOTA Database is managed by the Mexican Electoral Tribunal of the Federal Judiciary</li> </ul>  |
| Other                          | <ul style="list-style-type: none"> <li>▶ e-Bulletin on Constitutional Case-Law</li> </ul>   | <ul style="list-style-type: none"> <li>▶ n/a</li> </ul>    | <ul style="list-style-type: none"> <li>▶ The Joint Council on Constitutional Justice (JCCJ) has the responsibility for the publication of the e-Bulletin</li> </ul>  |
| Technical assistance projects  | <ul style="list-style-type: none"> <li>▶ Bilateral co-operation implemented by the Venice Commission</li> <li>▶ Legal assistance mechanisms within a Council of Europe-EU programme/project (for example QRM in PGG)</li> </ul> | <ul style="list-style-type: none"> <li>▶ Varied</li> </ul> | <ul style="list-style-type: none"> <li>▶ Number of Venice Commission staff varies by project/programme</li> <li>▶ Rapporteurs involved as in opinions (see above)</li> </ul>   |

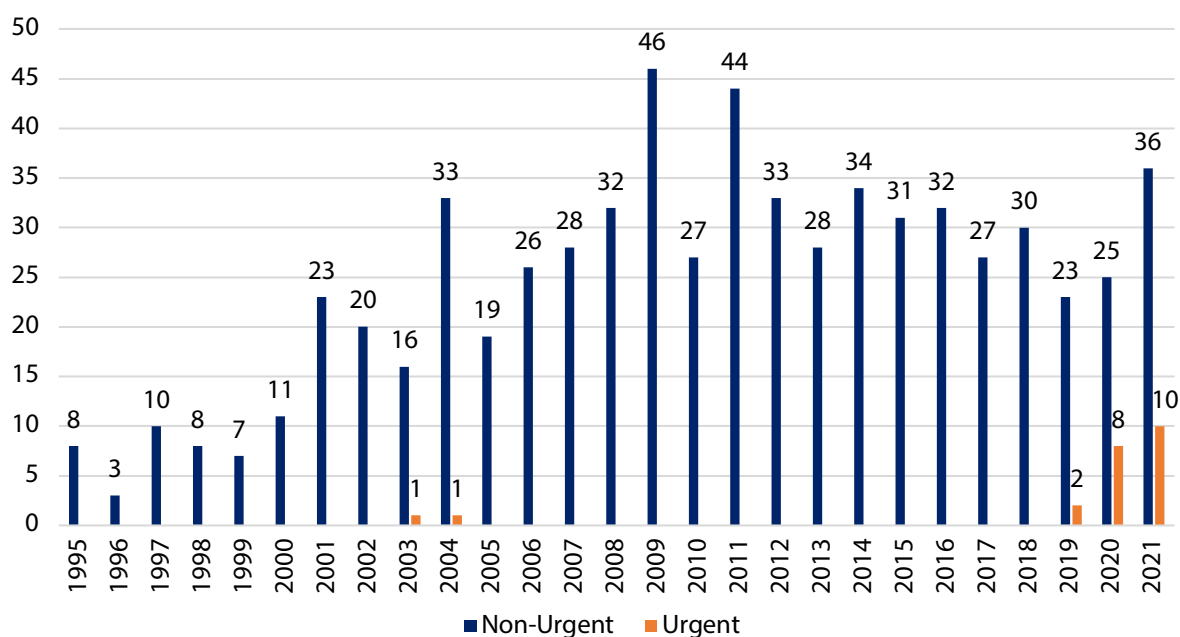
Source: own elaboration based on desk research and interviews

**The time allocated to individual activities has remained fairly constant over the last five years while the overall time spent by different type of activity has varied.** The demand-driven nature of opinions strongly influences the resources required and that are available for other types of activities (for example the organisation of events). As a result, an inverse correlation between opinions and events is observed. For example, in 2016 there were 35 opinions produced and 17 events organised, whereas in 2018, 14 opinions were issued and 36 events organised (see Figure 2.3). As for the databases, once the initial effort of setting them up had been completed, regular contributions are expected to take limited time. Exceptions and unexpected circumstances may very well affect the time dedicated to individual activities. This was recently the case of the translation of the VOTA Database into Spanish by the Mexican authorities, which required additional efforts, and the ad hoc online provision of electoral assistance to national authorities. Usually, electoral observation missions take place in-person and require travel time and several days in the country. However, Covid-19 and the travel restrictions in place have meant that assistance was moved to the virtual setting and took place, if at all, on a more modest basis.

**Although the amount of time allocated to different Venice Commission activities is not perceived as compromising the quality of outcomes produced, the pressure to produce quick results may not be sustainable in the medium term, at least if the Venice Commission's resources stay the same.** In particular, the increasing number of urgent opinions in the last few years is stretching its capacity to an extent that may potentially negatively affect the quality of its work. As shown in the chart below, the number of urgent opinions has grown considerably in the last two years: there were two issued in 2019, eight in 2020 and 10 in 2021. The short time frames in which urgent opinions are produced add considerable pressure to the workload of the Secretariat, which negatively affects its ability to respond to the increasing number of formal requests but also of informal ad hoc requests for support from member states.



Figure 3.17: Number of urgent vs non-urgent opinions by year <sup>120</sup>



Source: CSES own analysis

So far, the Venice Commission has been successful in managing this risk by, for example, issuing preliminary opinions if there is insufficient time to issue an ordinary opinion. In addition, when time constraints risk impacting the quality of the opinion, the focus has been reduced to some articles of the draft law only. This was the case for example of the opinion “Amendments to the Criminal Code and the Criminal Procedure Code” in Romania (reviewed as part of Case study 1). The Venice Commission rapporteurs focused only on 11 articles which were selected on the basis of the degree of public criticism they had garnered in the lead-up to the reform. In other cases, when Venice Commission rapporteurs had to work with an unofficial English version of the draft law, this is explicitly stated in the introduction of the opinion. Although these measures have helped to alleviate some of the pressures, this approach risks becoming the norm. If that were to happen, the overall quality of the activities of the Venice Commission could be compromised. The Venice Commission is well aware of this. In its progress review report for 2020, it states:

In order to preserve the quality of its advice, however, the Commission needs to devote sufficient time to the preparation of its opinions. It will therefore have to limit the opinions issued by way of urgency to those cases where time is really of the essence. Further, in order for its staff to dispose of sufficient time and energy to produce high-quality work, it will become necessary to give precedence to the preparation of opinions over general reports, and to streamline the Commission’s participation in non-essential external activities.<sup>121</sup>

### 3.3.3 To what extent were outputs of the Venice Commission delivered within requested deadlines?

The Venice Commission’s approach to and timeline for outputs varies as different levels of resources are needed for the drafting of opinions as opposed, for instance, to producing a report or the provision of legal assistance to the PACE electoral observation missions.

There was favourable survey feedback on the **extent to which opinions of the Venice Commission are delivered within requested deadlines** with a just over a third (38%) of the Venice Commission member respondents saying that this is always the case and well over half (56%) stating that this is mostly so. Several Venice Commission members argued that the timescales were, however, sometimes too short. For example, one member argued that “Sometimes the deadlines requested by the national authorities are unrealistic and compromise the quality of the opinion. In general, though, the Commission has proved over and over that it can produce opinions in a very short time, typically so-called urgent opinions”.

<sup>120</sup> For 2021, opinions are reflected as requested by November 2021.

<sup>121</sup> Progress review report 2020 – Venice Commission.

**Timelines for the drafting of ordinary opinions are primarily dictated by the Venice Commission's four plenary sessions, and (as noted earlier) agreed with the requesting entity on a case-by-case basis.** The timing also needs to reflect the particular circumstances prevailing at the time. This can involve "speeding up the adoption of an opinion but also occasionally delaying it, for example in order to avoid it having an unwarranted impact on national elections".<sup>122</sup> National authorities consulted explained that the Venice Commission Secretariat usually asks them for their preferred timeline, so as to adapt as much as possible to any local specificities. The Venice Commission's own commitments can also influence the timing. Thus, if a request is received too close to the time of the next plenary session, the opinion could be delayed until a later plenary session. There can also be logistical factors that influence the timescales. For example, because of other priorities, the authorities may not have the time to receive the rapporteurs during the fact-finding mission or longer than expected may be needed to translate legal documents into the English language.

### **Box 3.8: Timelines of selected opinions**

#### **Time scale of selected opinions on Democratic Institutions and Fundamental Rights (Case study 1)**

The documentary review revealed that it took on average around three months for the Venice Commission to issue its opinions after requests were made either by PACE or a member state, constituting a short period of time in light of the large scope of certain opinions (for example for Malta and Romania). This indicates the Venice Commission delivered opinions in a highly efficient manner and within the requested timescales. The rapporteurs interviewed all praised the efficiency of the Secretariat and the valuable work it provided in undertaking the research and supporting the drafting of the opinions. The beneficiaries were also pleased with the high turnaround of the opinions, many suggesting that it is one of the key elements of the added value of the Venice Commission.

#### **Timescale of selected opinions on Constitutional Justice (Case study 2)**

The Venice Commission has been efficient in delivering opinions and *amicus curiae* briefs within requested deadlines. Interviewees highlighted that the quality of the interventions was not affected by the short timeframes. Some interviewees from Poland were of the view that, although the Venice Commission is open to meeting different types of stakeholders when issuing an opinion, it should dedicate more time hearing different perspectives on the matter. Some argued that fact-finding missions would need to be longer to allow for a balanced consultation of stakeholders.

#### **Timescale of selected opinions on Elections, Referendums and Political Parties (Case study 3)**

The analysis suggests that the drafting of opinions is done in a time-efficient manner and adjusted to accommodate urgency: the opinion on the amendments to the election code in Georgia took two months to be produced; the urgent opinion on the postponement of elections in Kyrgyzstan on the other hand was produced within two weeks after it was requested. In this instance, interviewees did not find that the quality of the opinions was affected by the short time frames.

**Despite being drafted generally in less than one month, urgent opinions are it seems always delivered on time.** This is so even if it means fewer interactions with national stakeholders and the need to focus on only certain aspects of the subject matter (for example certain articles of a draft law). Although this procedure is recognised by the Venice Commission itself as having a potentially detrimental effect on the quality of the opinion, delivering on time is prioritised to ensure its relevance and impact. A similar procedure is used for the delivery of preliminary opinions in between plenary sessions. These are produced in a short timeline and shared in advance with the requesting authority on confidential terms to maximise what interviewees described as "the window of opportunity", that is, before draft laws become adopted acts after which changes become much more difficult, if not impossible.<sup>123</sup>

**According to the Venice Commission's internal reporting, in the period of 2016-20, the targets on opinions provided within the time frame set by the requesting bodies have been met in all cases.** Table 3.9 presents an analysis of the relevant indicator from the Council of Europe's P&B. In those cases where the target's achievement has not been completely fulfilled, this is not because of missed deadlines but rather because the number of requested opinions has been below the target, such as in 2019. As the Venice Commission does not have the right of initiative itself, the timing depends on the entities requesting its assistance.

<sup>122</sup> Venice Commission. (2018). Protocol on the preparation of the urgent opinions, endorsed by the Venice Commission at its 116th Plenary Session, Venice, 19-20 October 2018.

<sup>123</sup> [CDL-WM\(2017\)002-e](#).

**Table 3.9: Overview of opinions provided within the time frame set by the requesting bodies**

| Expected results  | Indicators  | 2016-2017 |              |              | 2018-2019 |              |              | 2020-2021 |              |
|---|---|-----------|--------------|--------------|-----------|--------------|--------------|-----------|--------------|
|   |   | Target    | Results 2016 | Results 2017 | Target    | Results 2018 | Results 2019 | Target    | Results 2020 |
| <b>Expected Result 1</b><br>National authorities have identified actions to improve their constitution and legislation. | Number of opinions on constitutional and legislative reforms provided within the time frame set by the requesting bodies. | 30        | 35           | 31           | ≥ 30 p.a. | 30           | 26           | ≥ 45      | 32           |

Source: Progress review report from the Venice Commission 2016-2020

100%    ≥ 75%    <75%    No assessment

Traffic light system measures percentage to which the target has been achieved in a given year.

**Interviewees were of the view that timelines for opinions were generally respected.** In some cases, the timeline requested by national authorities is not feasible. In other cases, it is external circumstances beyond the control of the Venice Commission that lead to the timelines being extended. For example, the opinion “Citizens’ Security Law for Spain” was requested by PACE in 2015 and adopted six years later in 2021.<sup>124</sup> The reason for this is that the preparation of this opinion was delayed on account of elections and also due to pending examination of several provisions of the law by the Constitutional Court of Spain. Once the court gave its main judgment in 2020, the Venice Commission work was resumed. Similarly, joint opinions of the Venice Commission and OSCE/ODIHR are considered to be delivered in a timely manner. Interviewees highlighted the additional co-ordination effort required when two or more entities are involved and stressed the importance of flexibility in the joint approach to adjust to changing developments. Reports, studies and guidelines produced on the initiative of the Venice Commission and PACE are developed without a public indication of a timeline. Timings are flexible and subject to the availability of the Venice Commission members contributing to the report, as well as of other experts and entities involved.

**As for electoral observation missions, these follow the timeline set by PACE but the contributions of Venice Commission experts are seen as timely.** The Venice Commission contributes its legal expertise before, during and after the observation mission, reviewing the legal context of the country, and providing insights during the in-person discussions with stakeholders. Some suggested that there is an excessively long time lapse between the mission and the report, resulting in recommendations sometimes coming too late to be relevant. For example, in the case of the most recent elections in Republic of Moldova, a report on the election observation in July 2021 has been produced but a report on recommendations had, as of late November 2021, not been produced. Furthermore, by late November, CEC officials had begun working on proposing amendments to the electoral code. Conversely, for the election observation in Turkey in 2018, the PACE delegation produced preliminary findings one day after the elections were held and later produced an election observation report around approximately nine weeks after the elections.

**Finally, flexibility in relation to timelines is a core element of Venice Commission technical assistance, especially when there is a need to balance such assistance with the delivery of events and opinions in a given period of time.** Therefore, projects tend to have a “soft deadline” approach whereby activities are planned ahead and postponed when financial and human resources need to be reallocated to helping with the preparation of opinions. Although the level of uncertainty in the short term is seen as a potential risk factor to the successful delivery of projects, interviewees were of the opinion that the flexibility to address the most pressing needs of member states, whether through activities or legal opinions, helps to promote an efficient use of the Venice Commission’s financial and human resources. Others, however, suggested that where capacity constraints arise, technical assistance projects should rely more on the resources of the Council of Europe. This could (as noted earlier) mean integrating the Venice Commission’s assistance more closely into the Council of Europe’s project management methodology, as is the case for other projects within the PGG. This would enable the Venice Commission to exploit one of its strongest assets, which is its ability to issue quick legal opinions through the QRM.

<sup>124</sup> CDL-AD(2021)004-e.

### 3.3.4 To what extent is the ratio of Venice Commission resources available appropriate for the expected level of outputs?

The financial and human resources available to the Venice Commission varies according to the nature of the activity. For example, the number of experts involved in drafting an individual opinion varies, and so does that of experts drafting a report. No details are available publicly on the cost of individual opinions nor the remuneration of individual rapporteurs. Instead, the resources devoted to an opinion are decided on a case-by-case assessment and at the discretion of the Secretariat.<sup>125</sup> However, all Venice Commission members consulted stressed the value of the Venice Commission members' contributions to the Venice Commission's work and the voluntary effort put into many activities that goes beyond what is requested.

The size of the Secretariat and of the Venice Commission (a maximum of two members per member state, one member and one substitute member),<sup>126</sup> has remained the same in the last few years despite the increasing workload. The Secretariat is composed of 23 staff members, most of whom are based in Strasbourg. The Venice Commission consists of experts from the 62 member states (after the recent incorporation of Costa Rica (2016) Canada (2019)) who work independently from the Venice Commission in between plenary sessions, usually with in-person attendance for fact-finding missions for opinions and the four plenary sessions per year in Venice. The Venice Commission experts and the Secretariat work closely together, with the Secretariat ensuring that it provides "the rapporteurs and working groups with adequate staff support".<sup>127</sup> Indeed, the institutional capacity of the Venice Commission to take on multiple requests for assistance, which can sometimes require detailed evaluation of national constitutions and draft laws within a short time frame, has been highlighted by many of those consulted as an important factor enabling it to make a distinctive contribution to constitutional reforms.<sup>128</sup> It is doubtful, however, that the Secretariat will be able to sustain its role if the demands on the Venice Commission continue to grow without additional human resources.

Table 3.10 provides an overview of the human and financial resources of the Venice Commission by year from 2016 to 2020. The resources available are presented next to a selection of the targets as set out in the P&B documents, one for each of the three expected result lines, with the corresponding reported results.

**Table 3.10: Resources available to the Venice Commission by year**

| Year | Venice Commission member states | Venice Commission staff   | Total Venice Commission budget <sup>129</sup> (in €k) | Selected targets by year   | Selected results by year  |
|------|---------------------------------|---|---|--|---|
| 2016 | 61                              | 23 posts (13A; 10B) and one position (1A) taking into account the proposal to create two posts (1A, 1B) | 5 590.0   | <ul style="list-style-type: none"> <li>▶ Opinions delivered: 30</li> <li>▶ Reports adopted: 4</li> <li>▶ Legal assistance to electoral observation missions (EOMs): 4</li> </ul> | <ul style="list-style-type: none"> <li>▶ Opinions delivered: 35</li> <li>▶ Reports adopted: 3</li> <li>▶ Legal assistance to EOMs: 9</li> </ul> |
| 2017 | 61                              | 23 posts (13A; 10B) and one position (1A) taking into account the proposal to create two posts (1A, 1B) | 5 503.6   | <ul style="list-style-type: none"> <li>▶ Opinions delivered: 30</li> <li>▶ Reports adopted: 4</li> <li>▶ Legal assistance to EOMs: 4</li> </ul>                                  | <ul style="list-style-type: none"> <li>▶ Opinions delivered: 31</li> <li>▶ Reports adopted: 3</li> <li>▶ Legal assistance to EOMs: 8</li> </ul> |

<sup>125</sup> Venice Commission. (2010). Guidelines relating to the working method of the Venice Commission, E. Preparation of opinions and studies, adopted by the Venice Commission at its 84th Plenary Session, Venice, 15-16 October 2010, p. 5.

<sup>126</sup> Revised statute, Article 2.2.

<sup>127</sup> Venice Commission. (2010). Guidelines relating to the working method of the Venice Commission, E. Preparation of opinions and studies, adopted by the Venice Commission at its 84th Plenary Session, Venice, 15-16 October 2010, p. 4.

<sup>128</sup> Craig P. (2017), "Transnational Constitution-Making: The Contribution of the Venice Commission on Law and Democracy, in *UCI Journal of International, Transnational and Comparative Law*, University of Oxford.

<sup>129</sup> Includes budgetary and extra-budgetary resources.

| Year | Venice Commission member states | Venice Commission staff                                      | Total Venice Commission budget <sup>129</sup> (in €k) | Selected targets by year   | Selected results by year   |
|------|---------------------------------|--|---|--|--|
| 2018 | 61                              | 23 posts (13A; 10B) and one position (1A) of which 1A frozen | 4 789.0   | <ul style="list-style-type: none"> <li>▶ Opinions delivered: ≥30</li> <li>▶ Reports adopted: 3</li> <li>▶ Legal assistance to EOMs: ≥5</li> </ul>  | <ul style="list-style-type: none"> <li>▶ Opinions delivered: 35</li> <li>▶ Reports adopted: 3</li> <li>▶ Legal assistance to EOMs: 7</li> </ul>  |
| 2019 | 62                              | 23 posts (13A; 10B) and one position (1A) of which 1A frozen | 4 246.7   | <ul style="list-style-type: none"> <li>▶ Opinions delivered: ≥30</li> <li>▶ Reports adopted: 3</li> <li>▶ Legal assistance to EOMs: ≥5</li> </ul>  | <ul style="list-style-type: none"> <li>▶ Opinions delivered: 26</li> <li>▶ Reports adopted: 9</li> <li>▶ Legal assistance to EOMs: 5</li> </ul>  |
| 2020 | 62                              | 23 posts (13A; 10B)  | 5 756   | <ul style="list-style-type: none"> <li>▶ Opinions delivered: ≥45 per biennium</li> <li>▶ Reports adopted: 6 per biennium</li> <li>▶ Legal assistance to EOMs: 10 per biennium</li> </ul> | <ul style="list-style-type: none"> <li>▶ Opinions delivered: 32</li> <li>▶ Reports adopted: 12</li> <li>▶ Legal assistance to EOMs: 4</li> </ul> |

Source: Council of Europe Programme and Budget 2016-2017, 2018-2019, 2020-2021

As outlined in the table above, the expected workload, indicated in the form of targets, has seen a slight increase over time. The results delivered have also continued to increase up to 2020, demonstrating the capacity of the Secretariat and Venice Commission members to respond to the needs of member states, yet also reflecting the growing pressure described by a number of interviewees. As for financial resources, travel and subsistence expenses of each Venice Commission member are covered by the member state concerned, and thus not reflected in the table above, whereas the Venice Commission budget covers the expenses for specific missions undertaken by Venice Commission experts.<sup>131</sup>

The degree of involvement by Venice Commission members in its work varies and is linked to their own initiative and interests and their area of expertise. Venice Commission members usually have high-profile roles in their countries and therefore a limited amount of time to dedicate to Venice Commission activities. Interviewees suggested that some members were very active and often involved in the drafting of opinions, whereas others seldom participated in plenary sessions or in the drafting of opinions. The decision to appoint rapporteurs lies with the President of the Venice Commission according to the rules of procedure (Article 14.1) and the Guidelines on Working Methods give this responsibility to the Secretary.

Participation in the work of the sub-commissions is open to all interested members in line with their expertise and interest.<sup>132</sup> The number, composition and chairs of the sub-commissions are decided every two years.<sup>133</sup> They generally meet on the Thursday before the Venice Commission plenary session in-person to discuss draft studies and opinions before the plenary considers them. In light of the high volume of opinions and studies, it was suggested that the number of sub-commissions should be increased to cover additional areas with a specialised group of rapporteurs. This, it was suggested, could on the one hand help reduce the workload on the plenary sessions, and on the other hand allow for a larger number of members to actively participate in the Venice Commission's proceedings as well as potentially extending coverage to additional thematic areas.

<sup>130</sup> Canada went from observer to full member in 2019. One member is designated for Canada, no substitute member is mentioned on the Venice Commission website.

<sup>131</sup> Revised statute, Article 6.4.

<sup>132</sup> Venice Commission. (2010). Guidelines relating to the working method of the Venice Commission, E. Preparation of opinions and studies, adopted by the Venice Commission at its 84th Plenary Session, Venice, 15-16 October 2010, p. 2-3.

<sup>133</sup> Venice Commission (2010). Rules of procedure, Article 17.1 and Guidelines relating to the working method of the Venice Commission, E. Preparation of opinions and studies, adopted by the Venice Commission at its 84th Plenary Session, Venice, 15-16 October 2010, p. 3-4.

Furthermore, it is argued, virtual meetings could be used on a more regular basis to discuss draft opinions and studies, also in between plenary sessions. Indeed, the use of digital communication methods could also allow for an increasing participation of experts from countries located outside of Europe.

### Box 3.9: Overview of sub-commissions of the Venice Commission

#### *Thematic sub-commissions*

- ▶ Fundamental Rights
- ▶ Federal State and Regional State
- ▶ International Law
- ▶ Protection of National Minorities
- ▶ Judiciary
- ▶ Democratic Institutions
- ▶ Rule of Law
- ▶ Gender Equality
- ▶ Constitutional Justice

#### *Geographical sub-commission*

- ▶ Latin America
- ▶ Mediterranean Basin

#### *Internal procedures*

- ▶ Working methods

There is also a case for more clarity about how decisions are made to accept requests for opinions and urgent opinions. The criteria are not available in the Venice Commission's internal documentation and requests are assessed on a case-by-case basis, mainly due to the very diverse nature of the urgency motivating requests for opinions. According to information available, the Secretariat informs Venice Commission members of requests for opinions or studies once these are made<sup>134</sup> whereas for urgent opinions, the authorisation of the Bureau in consultation with the rapporteurs is needed.<sup>135</sup> Notwithstanding the professionalism of the Secretariat in handling requests for assistance, more transparency in the decision-making process is widely considered to be desirable and, it is argued, would allow Venice Commission members to be more fully involved. For example, some interviewees doubted whether the Venice Commission should take on requests for opinions reviewing situations rather than legislation, such as the opinion issued for the Netherlands relating to the Childcare Act arguing that this goes beyond the scope of the Venice Commission's remit. Introducing clearer criteria would formalise procedures that have worked so far but which could nevertheless be improved. Likewise, many argued that the mandate and role of certain positions within the Venice Commission should be defined in more detail, especially the Bureau, the President and Vice Presidents.

In addition, clearly developed election procedures with, for example, secret ballots, would increase the legitimacy of the procedures. The current procedure, whereby the Group of Wise Persons proposes the candidates for President and Vice Presidents, is not specified in the internal regulations, nor is there clear guidance on the basis on which the Group of Wise Persons are selected. As for those Venice Commission members interested in running for Venice Commission leadership positions, there is an essentially informal approach to elections. However, the election process would benefit from being more clearly defined. Criteria could be developed outlining the requirements to run for the Presidency and Vice Presidency, the criteria and process for election of the Group of Wise Persons if this is retained in a formal manner, as well as the more inclusive election procedure for all Venice Commission members to run and vote for the Venice Commission leadership. This could build on, develop and formalise the experience of the elections held in 2021, for which the Group of Wise Persons sent a memorandum to all Venice Commission members setting out the criteria for candidates and explaining the election procedure. **Finally, as regards the impact of the Covid-19 pandemic on the Venice Commission working methods, the transition to more online working practices appears to have worked well.** The written procedure that replaced the in-person plenary session in March 2020 was later on supplemented by a hybrid model for the following sessions in which some Venice Commission members and national authorities connected remotely. This allowed for the formal adoption of opinions to take place and for additional participants to take part in the otherwise restricted plenary sessions. Also, Venice Commission members who would have otherwise not been able to fly to Venice for financial or other reasons could participate more easily. Although there is a preference to continue with in-person meetings of the Venice Commission, there is sufficient support for continuing to use virtual methods for certain purposes (for example, virtual meetings for sub-commission

<sup>134</sup> Venice Commission. (2010). Guidelines relating to the working method of the Venice Commission, G Practical matters concerning the Secretariat, adopted by the Venice Commission at its 84th Plenary Session, Venice, 15-16 October 2010, p. 5.

<sup>135</sup> Rules of procedure, Article 14a.

members) in the future as a way to lighten the content of the plenary sessions. There is strong support among the Venice Commission members consulted for ensuring that the assessment trips take place in-person again, once the public health situation allows.

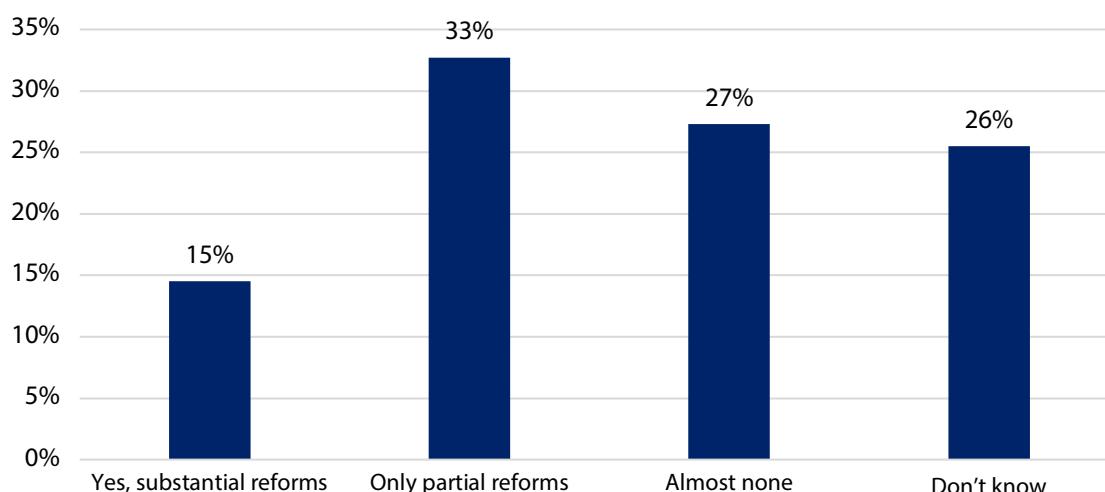
### 3.4 Impact of the Venice Commission

*Impacts can be defined as the extent to which the intervention has generated or is expected to generate significant positive or negative, intended or unintended, higher-level effects.*

**Overall, the Venice Commission has had a significant impact on the rule of law and democratic standards in its member states since its foundation.** Despite the fact that it is generally not possible to attribute changes only to the Venice Commission as many other factors have been important, there is a widespread agreement, at least among those contributing to the evaluation, that it has played a very significant role over the years. **The on-demand working style of the Venice Commission, the non-binding nature of opinions and other Venice Commission assistance leaves it up to national authorities to decide on the extent to which they make use of such assistance.** Therefore, the degree to which the Venice Commission has had an impact on the rule of law and democratic practices varies across countries and over time.

The differing perception of the long-term impact of the Venice Commission is further exemplified by the survey responses. Venice Commission beneficiaries and national stakeholders shared their views regarding successful long-term reforms in their country to which the Venice Commission had contributed. This further highlights the differences across countries and the challenge of tracking the long-term impact of the Venice Commission.

**Figure 3.18: Survey 2 – Has the work of the Venice Commission led to long-term reforms in the rule of law in the national legislation in your country?**



Source: Analysis of survey responses. N=55.

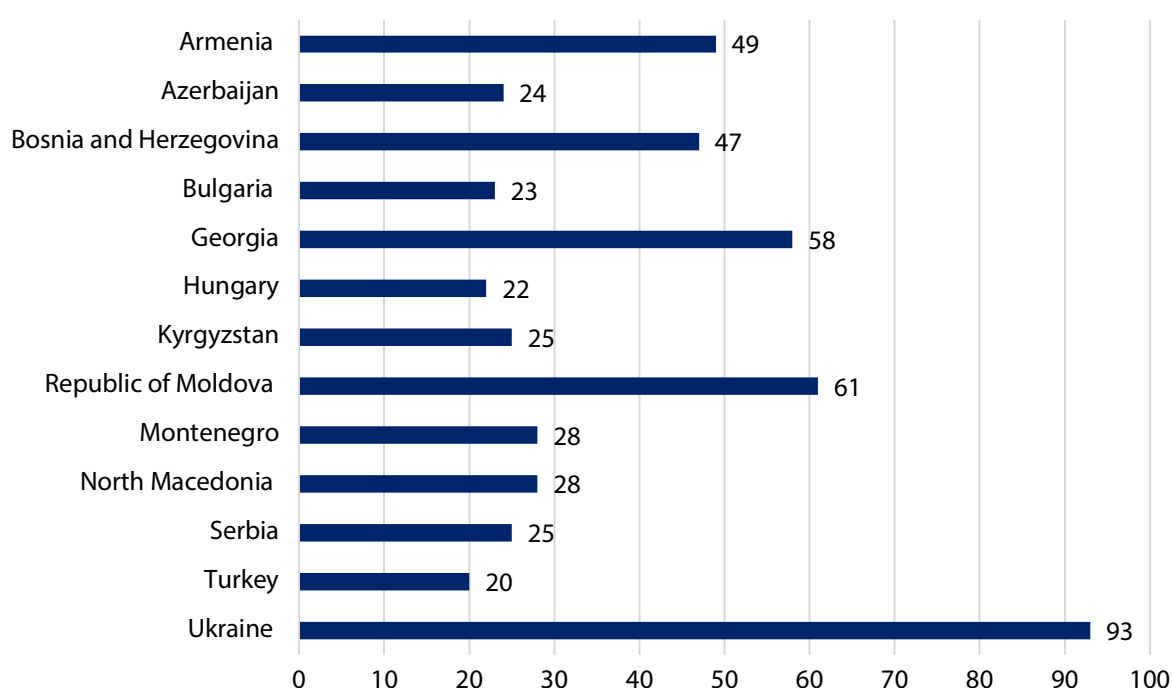
**In some member states, the impact of the Venice Commission has led to significant reforms in national legislation.** This is, for example, the case in many Central and Eastern European countries that engaged with the Venice Commission in the early stages of their democratic transition, and which are seen as having incorporated European and international standards in moving closer to the common constitutional heritage. In Republic of Moldova, the evidence highlighted the role of the Venice Commission in bringing the legislation in line with European standards, for example in the amendments to the constitution, and in setting the benchmark that countries should aspire to when introducing reforms. In the case of Ukraine, major changes in the legal system involving judicial and the constitutional reforms have been attributed to the Venice Commission. Similarly, stakeholders in Armenia argued that the Venice Commission has played an important role in the promotion of the rule of law in their country over a longer period of time. However, other Eastern Partnership countries have for various reasons not requested opinions from the Venice Commission.

**Besides, the impact of the Venice Commission in member states has been linked to other factors, among which the relationship with the EU is regarded as being the most important.** This is specifically the case in relation to EU member states, non-EU member states with accession aspirations, and other countries that benefit from EU support.

First, **EU member states** have, in most cases, well-grounded rule of law systems that offer different channels to deal with reforms. This has been explained as the reason for traditional “old” democracies such as Western European countries not relying on the Venice Commission as much as Central and Eastern European countries. For example, the first Venice Commission opinion for a Western European country was for the Canton of Ticino in Switzerland dated in 2000. Generally, there has been a considerably lower number of requests for opinions from Western European countries compared with Eastern European ones. Since 2010, Venice Commission opinions have been issued for Iceland, Malta, Luxembourg, Norway and the United Kingdom at the request of the countries, whereas opinions delivered at the request of the Council of Europe (PACE and the Court) have addressed issues in Spain, Italy, Malta, France and Belgium. Before that, only 10 opinions had been issued to Western European countries since the foundation of the Venice Commission. This points at a recent increasing activity of the Venice Commission in Western Europe that might change the situation that existed previously involving a rather limited impact in this part of Europe. The impact has also been more limited in Western Europe because in those cases where opinions were requested and implemented, the reforms needed to bring countries into line with international standards have required less adjustment than in Central and Eastern Europe.

The chart below identifies the countries that have received the largest number of opinions since the foundation of the Venice Commission. Most of these countries are located in Central and Eastern Europe.

**Figure 3.19: Venice Commission Member states that have received 20 or more opinions (1990-2021)**



Source: own elaboration based on the Venice Commission website and annual reports of activities

**Second, non-EU member states with EU accession aspirations** such as Albania and Ukraine have been the most receptive to Venice Commission recommendations because of a desire to align more closely with the EU, in several cases to increase the chances of eventual membership (for example, in the Western Balkans).<sup>136</sup> In these cases, the Venice Commission not only assists in the process of bringing legislation into line with European standards but has been described by interviewees as providing a “quality mark” for reforms. **Implementation of Venice Commission recommendations is thus seen as being a step closer to potential EU accession.** For example, when the EU decided to open accession negotiations with Albania, it adopted a series of conditions to be fulfilled prior to the intergovernmental conference with the EU member states, including implementation of the Venice Commission recommendations.<sup>137</sup> Likewise, the opinion on the “ordinary” judiciary in Ukraine was strongly supported by the EU, the IMF and the wider international community, which created the conditions

<sup>136</sup> Council of Europe (2020). *Venice Commission – Thirty-year Quest for Democracy through Law 1990-2020*, p. 468.

<sup>137</sup> Buquicchio G. and Granata-Menghini S. (2020). “Advisory or de facto binding? Follow up to the Venice Commission’s opinions: between reality and perception”, p. 285.



for a positive impact.<sup>138</sup> In the case of Turkey, the amendments to the constitution were highlighted by the then High Representative/Vice President Federica Mogherini as a matter of concern in a statement encouraging the authorities to implement the Venice Commission's recommendations.<sup>139</sup> **In the case of many other countries, the impact of Venice Commission activities is influenced by the leverage exercised by EU financial assistance.**

**Third, the role of the Venice Commission is regarded as having been pivotal in countries experiencing constitutional and/or other related crises due to its capacity to respond quickly with high-quality legal expertise, and with an understanding of the political context.** The Venice Commission's ability to act in an impartial way in polarised situations when addressing politically sensitive issues has been highlighted as key factor. In Tunisia, for example, the Venice Commission was involved in reviewing the drafts of the constitution after the "Arab Spring". Similarly, in the "constitutional crisis" in Republic of Moldova in 2019, the opinion issued by the Venice Commission contributed to the successful resolution of a growing crisis. As one of many factors promoting a peaceful transition, the value of the opinion lay in the provision of a sound legal analysis which served as a reference point for the reform process and ultimately led to the resignation of the Constitutional Court. However, in other cases, the Venice Commission's impact has been more modest. For example, Poland has distanced itself from the Venice Commission's recommendations issued in the context of the reforms to the judiciary and the justice system.<sup>140</sup>

### **3.4.1 To what extent has the Venice Commission contributed to the existence of well-functioning and democratic institutional structures based on the rule of law and respect for human rights?**

**The Venice Commission has contributed to a varied extent to the creation, development and strengthening of well-functioning and democratic institutional structures.** Whereas its role and long-term impact in Central and Eastern Europe, especially in the establishment of democratic institutions during the transition to democracy, is widely recognised, the impact on other regions is less clear. In Western Europe, the contribution to the strengthening of already existing democratic institutions and resolution of legal disputes is evident only in some countries. Conversely, the Venice Commission influence in regions further afield such as Latin America and Asia is more subtle and more recent.

In **Central and Eastern Europe**, the Venice Commission has been involved the longest and has had the greatest impact, contributing to the creation and later to the development of democratic institutional structures based on the principles of rule of law and human rights. Mainly in the form of opinions, the Venice Commission has assisted countries in the region in the creation of the most suitable institutions for a functioning democracy and has continued helping in their development over time. For example, in Georgia, the Venice Commission contributed to the judicial reform since the relationship with the authorities started during the drafting process of the constitution of 1995.<sup>141</sup>

As part of the establishment of a democratic legal system, the country opted to set up a separate Constitutional Court as recommended by the Venice Commission instead of alternative options considered at the time.<sup>142</sup> Ever since then, the Venice Commission has been involved in the shaping of the most important laws dealing with the system of government<sup>143</sup> and helped to prevent the rule of law being undermined (for example, the attempt to deprive judges of their protection against criminal proceedings)<sup>144</sup> and the deterioration of the independence of the judiciary.<sup>145</sup> In Ukraine, the co-operation between the Venice Commission and the national authorities over the last 25 years has translated into the institutionalisation of the rule of law values.<sup>146</sup> The comprehensive judicial reform of 2016 is one of the results of the continuous joint effort, which strengthened among other things the protection of judicial independence and the role of the Supreme Court and limited the president's role in the establishment and dissolution of courts.

138 Progress review report 2020 – Venice Commission.

139 European Commission. (2017). Joint statement by High Representative/Vice-President Federica Mogherini and Commissioner Johannes Hahn on the Venice Commission's opinion on the amendments to the Constitution of Turkey and recent events. Brussels, 13 March 2017, available at [https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT\\_17\\_588](https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_17_588).

140 CDL-AD(2016)001; CDL-AD(2016)026; CDL-AD(2017)028; CDL-AD(2017)031; CDL-AD(2020)017.

141 Council of Europe (2020). *Venice Commission – Thirty-year Quest for Democracy through Law 1990-2020*, p. 39ff.

142 CDL(1994)065, Meetings on the Draft Constitution of Georgia.

143 See, for example, CDL(2004)003.

144 Constitutional Law on Amendments and Additions to the Constitution of Georgia, no. 272, 6 February 2004.

145 Venice Commission, CDL(2005)012syn., Visit of Venice Commission delegation to Georgia (27-28 January 2005), Synopsis.

146 Council of Europe (2020). *Venice Commission – Thirty-year Quest for Democracy through Law 1990-2020*, p. 360.

In **Western Europe**, the impact of the Venice Commission has been more modest, with the institution being called upon for assistance in the context of specific tensions or legal disputes only in some countries. For example, in Liechtenstein the Venice Commission was involved in the long dispute regarding the revision of the constitution. Other countries have so far not made use of the Venice Commission's help through targeted opinions, possibly because other channels exist through which to conduct reforms at national level, as mentioned before. The courts have, however, often mentioned the Venice Commission in their rulings, recognising its authority and integrating its argumentation in their own judgments. This is the case for example in the UK, where the Venice Commission's views have been considered in 14 English cases and two Scottish ones.<sup>147</sup> In Spain, the Supreme Court and the Constitutional Court have mentioned the Venice Commission in their rulings in relation to the Catalan secessionist issue.<sup>148</sup> These examples highlight the "reception of the advisory doctrine of the Venice Commission by Courts".<sup>149</sup> Indeed, the Venice Commission has played an important role establishing European standards in Western Europe, for example concerning secession referendums. In the last decade, not only Spain but also Canada and Italy have faced secessionist issues.

**In other regions, the Venice Commission has issued fewer opinions and has had a more limited impact overall.** In North Africa, the targeted support has been focused on Tunisia and Morocco. In Central Asia, Kyrgyzstan and Kazakhstan have each received several Venice Commission opinions over the last 15 years. In Latin America, standards devised in Venice Commission studies and reports are the sources quoted most often as influencing the development of democratic institutions. In this region, Mexico's electoral justice is the most prominent example of the influence of the Venice Commission. In the period from 2008 to 2020, the Electoral Tribunal of the Federal Judiciary Branch of Mexico referred to Venice Commission's opinions and studies in 197 resolutions; 113 of these were issued by its High Chamber.<sup>150</sup> References to the Venice Commission publications include to the Code of Good Practice on Electoral Matters (74 mentions), the Report on the misuse of administrative resources during electoral processes (six mentions) and the Guidelines on Legislation on Political Parties (five mentions).

Beyond this, the Venice Commission has contributed to the democratic and constitutional development in the region: the Venice Commission stressed the importance of the separation of powers (for example in Peru in relation to the linking of constitutional amendments to the question of confidence)<sup>151</sup>, and provided guidance regarding the constitutional engineering and institutional design (for example with the publication of a set of guidelines to design strong constitutional systems based on the impartiality and efficiency of public prosecutor's offices). Although the latter recommendations addressed the situation in Bolivia,<sup>152</sup> they also served as replicable guidelines for other countries in the region for the establishment of independent and impartial public prosecutor's offices.

**Changes in the rule of law to which the Venice Commission has contributed are also frequently referred to by other Council of Europe bodies and international organisations, providing evidence of the Venice Commission's impact in the eyes of the international community.** For example, PACE's "Progress of the Assembly's Monitoring Procedure" regularly mentions developments in member states and refers to the co-operation with the Venice Commission. Positive developments in Bulgaria were mentioned in the European Commission's 2020 Annual Report regarding constitutional reform as well as its co-operation with the Venice Commission;<sup>153</sup> North Macedonia was mentioned in the 2018 report in relation to the settlement of the "name issue" with Greece;<sup>154</sup> Georgia's mention in the 2017 annual report was related to the close co-operation with the Venice Commission during the drafting of the constitutional amendments.<sup>155</sup>

As for other institutions, the EU Rule of Law report published by the European Commission often references the Venice Commission in relation to developments in member states. In 2020, the country report for Hungary, for example, referred to the provisions of the Media Act on the appointment and dismissal of the chairperson and members of the Media Council which were amended in line with Venice Commission recommendations<sup>156</sup> and this document also highlights the concerns of the Venice Commission in relation to some other areas.<sup>157</sup>

147 Council of Europe (2020). *Venice Commission – Thirty-year Quest for Democracy through Law 1990-2020*, p. 179.

148 Supreme Court Judgement 459/2019, p. 28, and Spanish Constitutional Court (Autos 126 and 127/2017).

149 Biglino Campos P. (2018). "La Comisión de Venecia y el patrimonio constitucional Común", *Revista General de Derecho Constitucional*, 28.

150 Council of Europe (2020). *Venice Commission – Thirty-year Quest for Democracy through Law 1990-2020*, p. 728.

151 CDL-AD(2019)022.

152 CDL-AD(2011)007.

153 Resolution 2357 (2021), available at <https://pace.coe.int/en/files/28995/html>.

154 Resolution 2261 (2019), available at <https://pace.coe.int/en/files/25427>.

155 Source available at <https://pace.coe.int/en/files/24305>.

156 CDL-AD(2015)015.

157 Source available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020SC0316&from=EN>.

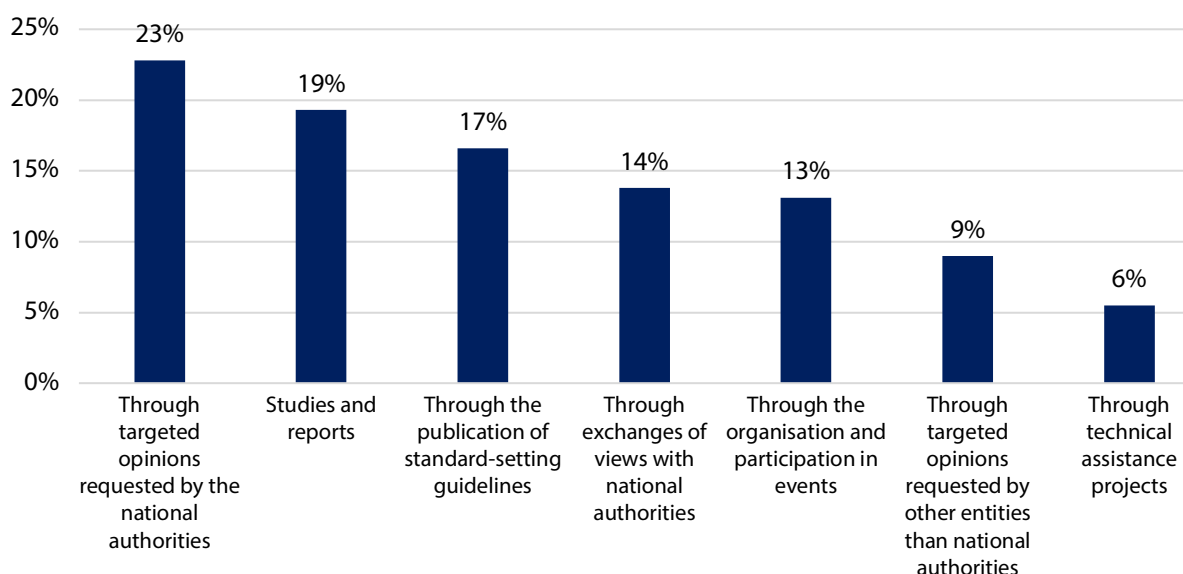
The EU has reacted positively and publicly to opinions – in 2020 for example, particularly on Ukraine, Albania and Republic of Moldova.<sup>158</sup>

**The Venice Commission has contributed to upholding the rule of law in its member states over the years through targeted legal assistance as well as through guidance and promotion of European standards.**

Technical assistance is available at different stages and throughout the reform process. Reviews of draft laws in opinions are often accompanied by assistance with implementation in the form of exchanges of views, conferences and training, sometimes also with additional opinions to review the law once implemented<sup>159</sup> to help ensure close alignment with European standards.

One of the survey questions asked for views on the concrete ways in which the work of the Venice Commission has contributed to the upholding the rule of law in member states. The Venice Commission beneficiaries that responded to the survey highlighted Venice Commission opinions as the most important factor followed by studies and reports, and standard-setting guidelines. The chart below provides an analysis.

**Figure 3.20: Survey 2 – In what concrete ways has the work of the Venice Commission contributed to the upholding the rule of law in member states/in your country?**



Source: Analysis of survey responses. N=55

**Feedback from the interviews also suggested that of all the Venice Commission’s activities, its opinions are considered to have had the greatest impact in the short term and to have received greatest political attention, especially in highly sensitive matters.** For example, the opinion on the electoral legislation of Mexico,<sup>160</sup> which was mostly implemented in the subsequent reform of the electoral code, is regarded as having led to concrete changes in legal practices. As mentioned earlier, this has been less often the case in the “old” democracies of Western Europe. This is partly because fewer opinions have been issued. In the EU, opinions contribute also to internal decision making, for example through exchanges with the European Parliament’s committees or reporting on the rule of law situation in member states.

**The impact of Venice Commission studies is perceived as varying across countries.** For example, the report on separate opinions of constitutional courts (Case study 2), more than having an immediate direct impact on particular constitutional courts, helped the Venice Commission to identify and define common issues that could then be applied to future opinions on constitutional matters. As some interviewees noted, it did not have an immediate impact but a long-term one. The report on term limits (see Case study 3), on the other hand, was quoted by the Inter-American Court of Human Rights in its consultative opinion on the matter. Consultative opinions from the court are non-binding on its members and therefore, while domestic political actors are able to cite this opinion, the impact of the Venice Commission is not clear, especially where politicians and constitutional courts reverse their decisions on re-election. In contrast, the Caribbean Court of Justice cited

<sup>158</sup> Progress review report by the Venice Commission 2020.

<sup>159</sup> There are very limited cases where opinions took a retroactive approach to the reviewing of adopted legislation but it is worth mentioning the case of Norway’s electoral legislation (CDL-AD(2010)046-e).

<sup>160</sup> [CDL-AD\(2013\)021-e](#).

the Venice Commission in its own binding opinion which prevented a former Guyanese President from running for another term after having served two as president.<sup>161</sup>

### **Box 3.10: Long-term impact of selected reports of the Venice Commission**

#### **Report on separate opinions of constitutional courts (Case study 2)**

- ▶ In June 2018, the Venice Commission prepared a report on separate opinions of constitutional courts. The aim of the report was to compare and contrast the allowance and use of separate or dissenting opinions in constitutional courts of all member states of the Venice Commission. In the vast majority of the Venice Commission member states, constitutional judges (or judges from the Supreme Court in countries where there are no constitutional courts) have the right to submit separate opinions whenever they do not agree with the court's judgment, whereas 12 member states do not permit separate opinions or have no related provisions on this and reject this in practice.<sup>162</sup> The report analysed the advantages and disadvantages of separate opinions and compared the different rules governing the separate opinions across member states.
- ▶ The report favoured the exchange of information on constitutional matters, thereby contributing to the development of the common constitutional heritage in the long term. This helps also other stakeholders to identify and implement (for example, in the case of national courts) the European standards. Although it is too soon to identify more tangible long-term impacts of this specific report, interviewees highlighted its value as a comparative law exercise and for the purpose of judicial cross-fertilisation.

#### **Report on term limits (Case study 3)**

- ▶ A report on term limits was requested by the Secretary General of the Organization of American States (OAS) following several instances of bad practice in which presidential term limits had been changed through national Constitutional Court decisions rather than through the appropriate constitutional reform procedure. In this way incumbent heads of state sought to bypass the one-term limit to their mandate to run for office after having already won one election.
- ▶ The Venice Commission Report concluded that internationally accepted democratic principles do not provide a "specific right to be re-elected" and that the constitutional limits serve to prevent excessive agglomeration of power. Therefore, while restricting voters' choices, the laws protect other key democratic rights.
- ▶ Although the report has been well received, as noted above the impact it has had is unclear. The conclusions of the report have been referenced by the Inter-American Court of Human Rights and the Caribbean Court of Justice, as well as by domestic opposition parties and civil society groups. This indicates that the report has contributed to the international institutional understanding of democratic norms, an impact that is likely to be long-term.
- ▶ The impact in terms of whether it has affected the activities of heads of states and incumbent political parties and whether it can do so is varied. While the Inter-American Court of Human Rights has issued its own opinion on term limits which reflects and cites the verdict of the Venice Commission, the fact that it is a consultative opinion means it is not binding on member states. Consequently, national constitutional courts and governments challenging this norm have not abided by this opinion. On the other hand, the opinion by the Caribbean Court of Justice was binding and prevented Guyanese President Bharrat Jagdeo from running for another term after having already served two terms as president.<sup>163</sup>

**Furthermore, other publications by the Venice Commission are known to have influenced to a varying extent international conventions in place today.** One of the Venice Commission's first activities, aware of the violent conflicts in the former Yugoslavia, was the drafting of a proposal for a Convention on the Protection of Minorities. Although the Committee of Ministers did not accept the proposal, the text influenced the Framework Convention for the Protection of National Minorities which it adopted in November 1994.<sup>164</sup> Other reports also dealt with the legal issues at the core of such recent conflicts, for example on the settlement of ethno-political

161 Gordon A. (2018). No 3rd Term – CCJ rules upholds law that bars presidents serving more than two terms. Guyana Chronicle, available at <https://guyanachronicle.com/2018/06/27/no-3rd-term-ccj-rules-upholds-law-that-bars-presidents-serving-more-than-two-terms/>.

162 The Venice Commission's member states that prohibit or have no provision on separate opinions are Algeria, Andorra, Austria, Belgium, France, Italy, Liechtenstein, Luxembourg, Malta, San Marino, Switzerland and Tunisia.

163 Telesur (2018). Caribbean Court Rules Guyanese Presidential Term Limits Legal, published 26 June 2018, available at [www.telesurenglish.net/news/Caribbean-Court-Rules-Guyanese-Presidential-Term-Limits-Legal-20180626-0027.html](http://www.telesurenglish.net/news/Caribbean-Court-Rules-Guyanese-Presidential-Term-Limits-Legal-20180626-0027.html).

164 Council of Europe (2020). *Venice Commission – Thirty-year Quest for Democracy through Law 1990-2020*, p. 451.

conflicts,<sup>165</sup> on federated and regional entities and international treaties<sup>166</sup> and self-determination and secession in constitutional law,<sup>167</sup> providing guidance based on practical experience of the Venice Commission. As highlighted by the former Secretary of the Venice Commission, Thomas Markert (2010-2020), the role of the Venice Commission was less relevant in addressing conflicts in the former Soviet Union.<sup>168</sup>

**Technical assistance projects create a framework for co-operation with national authorities on a range of issues.** This is the case with, for example, Ukraine where Venice Commission recommendations have been implemented to a large extent (supported by the “conditionality” clauses imposed by the EU and the IMF for the Macro Financial Assistance packages). The adoption of the electoral code in Ukraine following input from the Venice Commission is considered as a major achievement in the country. The provision of recommendations on improving the operation of the Verkhovna Rada (Ukrainian Parliament), by helping it address procedural guidelines on the rights and responsibilities of the majority and the opposition, has been widely welcomed. In Tunisia, the Venice Commission played a significant role in helping the country to ratify and meet many international and European standards concerning good governance and fundamental rights by, for instance, providing legal support for the development of its new constitution (see Case study 4).

**Even where implementation is modest or non-existent, there is still a value in the opinions issued by the Venice Commission as a statement about a situation.** In those cases where no reforms have taken place following an opinion and other activities, feedback from the interviews suggests that, for example, issuing an opinion nevertheless has value in itself and may become the basis for future reforms. As one of the Venice Commission beneficiaries responding to the survey noted: “While in some countries, like the one I am based in, Venice Commission opinions did not result in legal change and recommendations were, to a large extent, not applied, this does not mean that they do not have an impact. Keeping a record of the failure (or success) of lawmakers to adhere to human rights standards is a value in itself. Joining the voices of civil society by publishing these opinions drafted by independent high-level experts, does have value”.

**Opinions, also if not implemented, are used by different stakeholders such as civil society organisations and other non-state entities to strengthen their position.** Indeed, interviewees suggested that regardless of the extent of implementation of the Venice Commission’s recommendations, opinions had in all instances some degree of impact at the national level and in many instances informed public debate. For example in the Russian Federation, the opinion on the constitutional amendments was commented upon by the authorities, the media and the academic community.<sup>169</sup> Interviewees pointed out that opinions are used by three main types of stakeholders: those taking a different stand to the official government position, which according to some interviewees allows them to rely on an objective point of view to support their arguments; judges, lawyers and other legal practitioners for whom the Venice Commission’s opinions as well as other outputs such as the “Rule of Law Checklist” are important reference points and often used in their legal arguments; civil society, NGOs, associations and academics also make considerable use of the Venice Commission’s outputs to support their arguments.

### **3.4.2 To what extent has the Venice Commission contributed to the creation of a pan-European legal area with robust institutions and procedures based on the rule of law at all levels?**

The Council of Europe has established, since its foundation, a common legal system for European states, based on the principles of democracy, the rule of law and human rights.<sup>170</sup> This common legal system is often referred to as “pan-European legal area”, given the organisation’s geographical enlargement since 1989. The Council of Europe’s standard-setting texts, for example conventions and charters, among other things, apply all over Europe, and serve the purpose of harmonisation of European legal systems to the benefit of peace, stability and prosperity.<sup>171</sup>

**In this context, the Venice Commission is perceived as having made a substantial contribution to the “pan-European legal area” through its legal assistance in the area of democracy, fundamental rights and the rule of law in Europe and beyond.** In its early days, the Venice Commission’s opinions and assistance to the Central and Eastern European countries transitioning to democratic systems played an important role

<sup>165</sup> CDL-INF(2000)016.

<sup>166</sup> CDL-INF (2000)003.

<sup>167</sup> CDL-INF(2000)002.

<sup>168</sup> Council of Europe (2020). *Venice Commission – Thirty-year Quest for Democracy through Law 1990-2020*, p. 452.

<sup>169</sup> Progress review report 2020 – Venice Commission.

<sup>170</sup> Benoît-Rohmer F. and Kelbes H. (2005), *Council of Europe Law – Towards a pan-European legal area*. Council of Europe Publishing.

<sup>171</sup> *Ibid.*, p. 115.

in the creation and further development of their democratic institutions, their respect of the rule of law and the protection of human rights. Ever since, the legal expertise provided at the request of member states, Council of Europe bodies and international organisations has served as guidance for authorities, civil society organisations and the wider civil society on interpreting and implementing international standards. At times, the Venice Commission has also been asked to study transnational themes and to prepare legal opinions on the interpretation of Council of Europe treaties. As a result, the Venice Commission's recommendations have contributed to the Council of Europe's role in harmonising European states' domestic law and legal systems.

In addition, the **e-Bulletin on Constitutional Case-Law allows the Venice Commission to assist courts by facilitating the exchange of information between them, further contributing to the development of a common legal space.** The e-bulletin contains reports on the case law of constitutional courts and courts with equivalent jurisdiction in Venice Commission member states and observer states, including the case law of the European Court of Human Rights, the Court of Justice of the European Union and the Inter-American Court of Human Rights. Judges, legal practitioners and constitutional law experts, as well as other subscribers, are able to follow the case law of other courts which otherwise would not be available because of language barriers. Interviewees highlighted the value of the bulletin and expressed their support for an even wider dissemination for an increased impact over time.

**References to the Venice Commission opinions by international organisations, European Courts, national authorities and academia, especially in the countries subject to an opinion, are an indication of its impact.** The fact that the EU and the United Nations quote the Venice Commission work in their own work demonstrates its capacity to influence developments. In addition, the Venice Commission also influences the Court of Justice of the European Union and the European Court of Human Rights, both courts having mentioned the Venice Commission opinions in their rulings, including the Venice Commission's 2017 opinion on the draft law on transparency of organisations receiving support from abroad,<sup>172</sup> which was taken into account by the Grand Chamber of the European Court of Justice in the *Commission vs Hungary, Transparency of associations*, (C78/18), delivered on 18 June 2020, and the opinion on laws relating to the judiciary in Romania,<sup>173</sup> which was confirmed by the Court in a judgment (*Kövesi*) with substantial coverage at the national and international levels.

**Beyond Europe, the expansion of the Venice Commission's membership to other countries in North Africa, Central Asia and Latin America is widely seen as making a positive contribution to efforts to promote European standards of democracy, the rule of law and fundamental rights.** Closer co-operation with its member states in other continents has allowed the Venice Commission to issue opinions and provide technical assistance to align national legislation with the common constitutional heritage. In order to overcome a potential perception of a European entity imposing its values elsewhere, and to increase its legitimacy in these regions, a mixed team of rapporteurs with representation from different countries (also from outside Europe) and areas of expertise is seen as being helpful.

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<sup>172</sup> CDL-AD(2017)015.

<sup>173</sup> CDL-AD(2018)017.



## 4. Overall conclusions and recommendations

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**T**his section summarises the main conclusions of the evaluation and outlines a number of recommendations for consideration by the Venice Commission. Section 4.3 sets out some possible lessons learned.

### 4.1 Overall conclusions

**The Venice Commission is a highly regarded institution that plays an important role in the international field through its activities to promote democratic values and the rule of law.** Throughout its 30 years of existence, it has provided legal advice and assistance that is perceived as relevant, valuable and timely to member states, often in challenging and fast-moving circumstances. By doing so, it has established itself as an independent and widely respected international authority in the field of constitutional justice and the rule of law, recognised by international organisations, Council of Europe bodies and member states alike as an important reference point. In highly politicised situations, the Venice Commission's recommendations have sometimes been controversial with only limited implementation taking place. However, even in these situations, the Venice Commission recommendations have often been perceived by non-governmental stakeholders as important.

**The important role of the Venice Commission as an independent consultative body is widely recognised, both in Europe but increasingly further afield.** Direct impacts attributable to the Venice Commission over time are difficult to measure because many factors can influence changes in member states, and no systematic internal monitoring is undertaken to check whether recommendations are implemented. However, there is a general consensus on the role of the Venice Commission as one of the main authorities in the field of human rights, democracy and the rule of law, setting the standards for others to follow.

**While its modus operandi is fundamentally sound, there are ways in which the Venice Commission's efficiency and effectiveness could be enhanced.** With increasing demand for Venice Commission opinions, especially in recent years, but quite limited resources, the sustainability of the Venice Commission's operations on the current basis is likely to be compromised in the near future. There are also other actions that could be taken to improve the transparency of Venice Commission working methods and procedures and to help maximise impacts.

### 4.2 Specific conclusions and recommendations

The more specific conclusions of the evaluation are summarised below under the headings of relevance, effectiveness, efficiency and impacts. Recommendations are made where appropriate.

#### 4.2.1 Relevance

**Alongside other parts of the Council of Europe, the Venice Commission has become an important element in the international legal order.** It provides legal and technical expertise, to a large extent on-demand, in the form of opinions and other "constitutional aid" to its member states in line with the Council of Europe's overall mission. The Venice Commission's relevance stems from its capacity to provide high-quality timely and impartial assistance to member states and other authorities on complex legal issues. Over time, the Venice Commission has adapted its areas of work and responded flexibly to member states' needs and the changing circumstances in the international order generally. While this has meant its activities have remained highly relevant, it also suggests that the Venice Commission should provide an updated overview of the scope and core areas of its work for additional clarity. In addition, the Venice Commission could review its rules of procedure to ensure that they still provide an appropriate framework for its current needs.

**Recommendation 1: The Venice Commission should provide a detailed overview of the scope and core areas of its work for additional clarity and review its rules of procedure in light of current challenges and demands.** After 30 years, a review of the Venice Commission's rules of procedure would be justified to ensure that it is "future-proofed" and remains relevant in light of the expanded membership and changing circumstances.



An updated and clear overview of its areas of work could help to prioritise the Venice Commission's activities, in particular the increasing demands for (urgent) opinions. This would also help member states' understanding of the situations in which they can engage the Venice Commission's expertise.

**As part of its goal to promote the rule of law and democracy, the Venice Commission's activities have been very relevant to developing European standards and principles.** By doing so, the Venice Commission has encouraged member states to bring their legal systems into line with international standards, for example by issuing documents setting out international standards such as codes of good practice, guidelines and checklists. There is room to further develop this role by preparing additional compilations (for example, in the form of thematic publications) which provide overviews of key principles and, at the same time, help ensure consistency in the way these standards are applied across member states.

**Recommendation 2: To enhance the Venice Commission's relevance, additional compilation(s) of European standards should be prepared in certain thematic areas to reinforce the guidance on international principles available to member states on the rule of law and democracy.** Compilations of international standards in different thematic areas developed by the Venice Commission in collaboration with other Council of Europe bodies and partners such as the OSCE/ODIHR would provide additional clarity regarding key international principles. By consolidating international principles on a broader scale, the Venice Commission would further strengthen its relevance and its position as a leading source of legal expertise for member states on the issues they face.

#### 4.2.2 Effectiveness

**Feedback from the research indicates that the Venice Commission has been effective in achieving its objectives as set out in the Programme and Budget documents.** More specifically, in terms of achievement of the "expected results" targets set out in the Council of Europe's Programme and Budget, as measurement of the Venice Commission's effectiveness, it can be stated that there has been consistent good overall performance over the past five years across all three "expected results" categories. The Covid-19 pandemic constituted a major challenge in 2020-21 that did not, however, prevent the Venice Commission from being on track to achieve the 2020-2021 targets.

**Beyond the "expected results" output measures, the findings are less clear with regard to the intermediate outcome as set out in the Venice Commission's theory of change:** "National authorities adopt, amend and implement their constitutions and legislation in compliance with the Common Constitutional Heritage as recommended by the Venice Commission". This is reflected in both the Venice Commission's own progress review reports and the feedback from the interviews and survey work for this evaluation. The report examines the factors influencing Venice Commission outcomes, whether positively or negatively. The most important factors that are within its control include the Venice Commission's capacity to deliver high-quality outputs in a timely manner and the way the Venice Commission engages with national authorities through flexible "constructive dialogue". However, the extent to which the Venice Commission can influence intermediate outcomes is limited and depends also on the actions taken by the member states. Ultimately, it is the political willingness of national authorities to accept and implement the Venice Commission's recommendations that is decisive for the Venice Commission's work to translate into actual changes in legislation and legal reforms. It is also the case that changes in member states depend on a variety of factors and not just the Venice Commission's recommendations.

**The Venice Commission engages with a wide range of national and international partners in carrying out its work but there is scope to formalise this in relation to some entities.** The involvement of the EU and international organisations such as the IMF further gives the Venice Commission leverage as its opinions are often linked to EU accession negotiations and/or financial assistance programmes. Indeed, the Venice Commission is most effective when the wider political context creates the conditions for successful implementation. A more substantial role could also be given to civil society organisations so that they can also contribute their expertise to support the Venice Commission's work and thereby add to its effectiveness. This could be done via the field offices and could, for example, take the form of joint events related and unrelated to opinions.

**Recommendation 3: The Venice Commission should develop channels for closer joint working with civil society organisations and legal associations in member states on opinions and other Venice Commission activities, possibly via the field offices.** Civil society organisations and legal associations involved in the Venice Commission's areas of work have much to contribute in terms of their legal and political knowledge and insight to the situation in countries. Therefore, the Venice Commission should develop and systematise the channels

though which these entities can, as and when relevant, provide inputs, for example regarding the legal and political developments in a country in the context of issuing an opinion. A broader societal engagement of this sort would enable the Venice Commission to adopt a more holistic stance in relation to issues it is asked to consider in member states.

**Although Venice Commission external communications have improved, there is scope to further develop this aspect of its activities.** Improved and better focused internal and external communication could help, on the one hand, to strengthen the co-ordination and co-operation with other Council of Europe bodies and, on the other hand, to increase the visibility of the Venice Commission more widely. Internally, additional structured communication channels could help promote the sharing of expertise with other Council of Europe bodies, maximise joint outputs and make it easier to exploit synergies. Externally, the media coverage and visibility of the Venice Commission varies across member states and is greater in those countries where a larger number of opinions have been issued. The dissemination of Venice Commission opinions through the Council of Europe's Directorate of Communications is regarded as working well. However, this role could be further developed.

**Recommendation 4(a): Communication with other Council of Europe bodies should be strengthened to facilitate co-ordinated efforts.** Increasing formal communication channels between the Venice Commission and other Council of Europe bodies could help strengthen co-operation and further embed the Venice Commission in the wider Council of Europe structure. Joint opinions with other Council of Europe bodies could be replicated in other thematic areas, especially where the Council of Europe has expertise to add.

**Recommendation 4(b): The Venice Commission's external communication should be further developed in co-operation with the Council of Europe Directorate of Communications so as to increase the visibility of the work done across countries and the wider public.** A greater effort could be made to publicise the Venice Commission's activities and communicating the outcomes more widely, for which additional resources would be needed. Efforts to streamline the external communication could include drafting a communication strategy, providing additional publicity to the already existing Venice Commission quarterly newsletter or approving press releases on individual opinions more quickly to allow the media to report on them in a timely manner. The selective approach towards issuing press releases only for the more technical and sensitive opinions is considered to work well. However, clearer timelines for publication of adopted opinions after the plenary sessions would help journalists to better plan their coverage of the Venice Commission's work. In addition, the Venice Commission website could benefit from an update to make it more user-friendly and easier to navigate.

### 4.2.3 Efficiency

**The research carried out for this evaluation suggests that the Venice Commission operates very efficiently and despite having only modest financial and human resources, performs to a high standard. However, additional resources will be needed to ensure the sustainability of its operations in the future.** The Venice Commission faces pressure to continue delivering high-quality outputs, especially in the form of urgent opinions, particularly given the ongoing constraints on its financial and human resources. In addition to the role of the Venice Commission members, the Secretariat plays a crucial role in ensuring that it fulfils its mission. However, the analysis suggests that if demand for its services continues to increase, and if the Venice Commission is to operate on a sustainable basis and maintain the quality of its opinions, its human resources will need to be increased. Indeed, an increase in human resources will not only be crucial for the sustainability of its operations but further to facilitate the implementation of the recommendations provided in this evaluation. As for the constraints on financial resources, these could be at least partially addressed through voluntary contributions, which constitute a clearly defined channel through which the Venice Commission can receive additional financial support from member states.

**Recommendation 5: The Venice Commission's human resources should be increased to ensure the sustainability of its operations in the future.** An increase in human resources in line with the continuing increase in workload would allow the Venice Commission to continue its high-quality work in all its fields of expertise and across its different type of activities without compromising quality. It would relieve some of the pressure on the Venice Commission Secretariat and allow for other activities, such as events (conferences, seminars), to take place on a larger scale to support opinions. An increase in resources would further support the implementation of the recommendations resulting from this evaluation. This is a decision that would need to be taken by the Committee of Ministers in the context of the next Programme and Budget review.

As for the Venice Commission technical assistance projects, these provide a framework to develop trust and a close co-operation with national authorities, which further contribute to creating the positive conditions for the implementation of Venice Commission recommendations. In addition, they allow for a targeted assistance to the country at stake. The implementation of projects could benefit from being supported more closely by the wider Council of Europe organisation or by additional resources in the field. This would allow for the Venice Commission to maximise its strongest assets, which is its ability to issue quick legal opinions through the QRM. The Council of Europe Projects Management Methodology could also be further embedded in the Venice Commission technical assistance projects to bring projects more in line with Council of Europe working methods, including internal and external reporting.

**Recommendation 6: The management of international co-operation activities should be reviewed and technical assistance projects brought further in line with the Council of Europe Project Management Methodology.** Additional resources for project implementation in the field, either from the broader Council of Europe or the Venice Commission, would contribute to maximising the Venice Commission's key asset in the form of technical assistance either through opinions or other types of targeted support. For example, co-operation projects could be more closely linked to reforms and changes in the legislation following Venice Commission opinions. In addition, this would allow for further reporting internally and externally to bring them in line with Council of Europe standards.

**The evaluation suggests that the criteria for individual members to serve on the Venice Commission might need to be adjusted to safeguard their independence and minimise potential political interference.** For that purpose, a similar process to that used by the European Court of Human Rights could be adopted to approve members. Another possibility would be to establish a body to review appointments.

**Recommendation 7: Revise the rules of procedure in respect of the process for the appointment of members to help ensure the highest standards of independence and technical knowledge.** This could further involve the creation of a Venice Commission panel responsible for reviewing the appointment of members, consisting of members of the Secretariat and/or of the Enlarged Bureau. Its role would be to review the nomination of Venice Commission members by the member states and provide an informal and confidential opinion on the suitability of the candidates. The existing criteria to be fulfilled by the potential Venice Commission members might have to be expanded to include, for example, the positions members can hold in their country of origin while being members of the Venice Commission, to safeguard the independence and neutrality of the Venice Commission and its individual members. It would clearly be important to safeguard the right of member states to take sovereign decisions and, as such, they should continue to have the ultimate say in appointments.

**The Venice Commission operates in an efficient way, its flexibility being stressed by many as a strength that allows it to respond in an appropriate way to member states' needs. At the same time, the evidence suggests that there is room to formalise procedures with the aim of increasing transparency.** A number of possible improvements have been highlighted by the evaluation, including defining the mandates and establishing clearer election procedures for the Venice Commission President and Vice Presidents, increasing transparency in some other processes such as the selection of rapporteurs for opinions as well as additional clarity in the decision-making procedure for (urgent) opinions. More clarity and transparency would not only further enhance the legitimacy of the Venice Commission's activities but might also increase the engagement of some of its members and reassure others that appropriate rules and procedures are in place.

**Incorporating some of the working practices that have proved successful during the Covid-19 pandemic in the longer term could enhance the Venice Commission's efficient way of working.** The increasing use of digital communication methods (for example, more virtual meetings in between plenary sessions) would save costs and could facilitate the participation of members from faraway countries. Besides, a more inclusive approach to the work of the Venice Commission's sub-commission and the wider use of Council of Europe languages would increase the active participation of those Venice Commission members not comfortable using English as the primary working language.

**Recommendation 8: Review the working methods of the Venice Commission to formalise certain processes and procedures to ensure greater clarity and transparency while retaining a sufficient degree of flexibility.** Additional clarity and transparency in the form of procedures for Venice Commission activities would be beneficial to ensure a consistent approach beyond common practices and increase the legitimacy of the Venice Commission's work. This could be led by the sub-commission on working methods with the input of the wider Venice Commission members.

## 4.2.4 Impact

**The Venice Commission's impact varies across countries and is evidenced in the form of implementation of its recommendations at a national level, but also through references to its work by international institutions, civil society organisations and the media.** The Venice Commission played a very important role in the 1990s and early 2000s in helping countries in Central and Eastern Europe to make a transition to democratic systems based on the rule of law. Since then, the Venice Commission has performed a continuing role in relation to some European countries and others beyond European borders with evidence of similar impacts. Its guidelines, reports and opinions are seen by the international community as setting the standards for democracy, the rule of law and fundamental rights, and referred to by national authorities, civil society and the wider international community alike.

**The Venice Commission's constructive and sensitive engagement with national authorities and other national stakeholders is the basis of the respect it commands and ultimately the impact it achieves.** Sharing the ownership of reforms with the relevant authorities and accompanying them in the process through formal and informal consultations, the Venice Commission's adaptability is seen as key in contributing to developing national authorities' capacity to adopt, amend and implement reforms to the extent that political will and the broader contextual situation allows. While the role of the EU and other international organisations like the IMF play a relevant role as leverage in implementation, for example by referring to Venice Commission recommendations as a condition in accession negotiations, the Venice Commission's independence and autonomy is to be safeguarded.

**Recommendation 9: Maintain and increase over time the Venice Commission's dialogue-based and constructive approach in relation to member states.** The constructive, dialogue-based approach of the Venice Commission should be maintained and preferably further developed with the support of additional resources as one of its key features contributing to the Venice Commission's positive impact. The role of formal and informal consultations in the implementation phase could be further expanded so as to provide additional guidance to authorities in translating the recommendations into practice. In that sense, a more adequate (increased) number of events should be held following the issuing of opinions to help their dissemination and ensure the understanding and ultimately the buy-in of stakeholders. These meetings could help clarify questions and assist in the implementation phase as requested by the authorities.

**Finally, the limited monitoring of the implementation of recommendations included in the individual opinions limits the capacity of the Venice Commission to understand its own impact over time, gain insights into the developments of individual countries and inform their approach for future engagements.** Although some degree of follow-up is provided in the plenary sessions, in annual reports and on the website, there is room for additional follow-up in the form considered most appropriate and in line with the Venice Commission mandate and its available resources.

**Recommendation 10: Consider the development of an internal monitoring and evaluation framework to help increase internal insights on the extent of the Venice Commission's impact.** This would need to be developed in consultation with the member states for it to be in line with the Venice Commission's mandate and without compromising its working methods and good relations with member states. In addition, the necessary resources would need to be made available for the Venice Commission to be able to develop and implement such a monitoring mechanism. Different approaches could be considered, including the coverage of all opinions or only some (for example those requested by state authorities or those considered to be most sensitive). It could be kept internal or made public – the implications of each option would need to be assessed and be carried out by the rapporteurs themselves after the appropriate period of time or be done in co-operation with Council of Europe bodies tasked with monitoring (for example PACE or the Committee of Ministers. For the latter, Council of Europe bodies could refer to implementation in their monitoring reports, to further strengthen the cross-referencing across Council of Europe bodies.) If the results were to be made public, a more developed monitoring and evaluation framework would be welcome by international and national partners alike and constitute an additional source of reference to the Venice Commission in its future engagements.

## 4.3 Lessons learned

The lessons learned from this evaluation can be divided into two categories – methodological and substantive. In relation to the latter, we have focused on several points of potential wider relevance to the Council of Europe because the 10 recommendations set out in the previous section have in effect been derived from the lessons learned from the evaluation.

#### **Box 4.1: Potential lessons learned**

- ▶ **A lesson to be learned from this evaluation is that such assessments should be undertaken more often.** This was the first evaluation of the Venice Commission since it was launched 30 years ago and it was difficult to assess the earlier years of its operations. Periodic evaluations (for example every 5-10 years), perhaps to coincide with the transition from one programming period to another, would be preferable.
- ▶ **In terms of the evaluation research, the assignment demonstrated that this can be carried out very effectively using digital/remote methods.** It is unlikely that fieldwork on the scale that was ultimately accomplished (120 interviews) would have been possible using a more “traditional” face-to-face approach. That said, the evaluation also showed that the “traditional” approach is helpful in situations where the role of the Venice Commission is controversial, and interviewees are more likely to speak freely if talking to somebody on a face-to-face basis.
- ▶ **The Venice Commission Secretariat and DIO’s support was important in ensuring that key stakeholders contributed to the research.** The Council of Europe’s “hybrid” approach to this evaluation mean that there was a closer involvement of its staff in the study than would probably have been the case with a client–contractor model. The support of the Council of Europe’s offices in the member states was also very helpful in this respect.
- ▶ **There is a balance to be struck between maintaining the separate “branding” of Council of Europe bodies such as the Venice Commission, on the one hand, and being more closely integrated into the Council of Europe’s structure, on the other.** The evaluation suggests that the separate identity of the Venice Commission is undoubtedly helpful in raising its profile in member states and underlining its status as an independent body in the international judicial field. However, at the same time, the evaluation has shown that being part of the Council of Europe has benefits from an operational point of view in particular in terms of the support from field offices and being able to benefit from resources and expertise of the Organisation as a whole. Striking a balance between these considerations is likely to be important for other Council of Europe bodies.

# Appendices

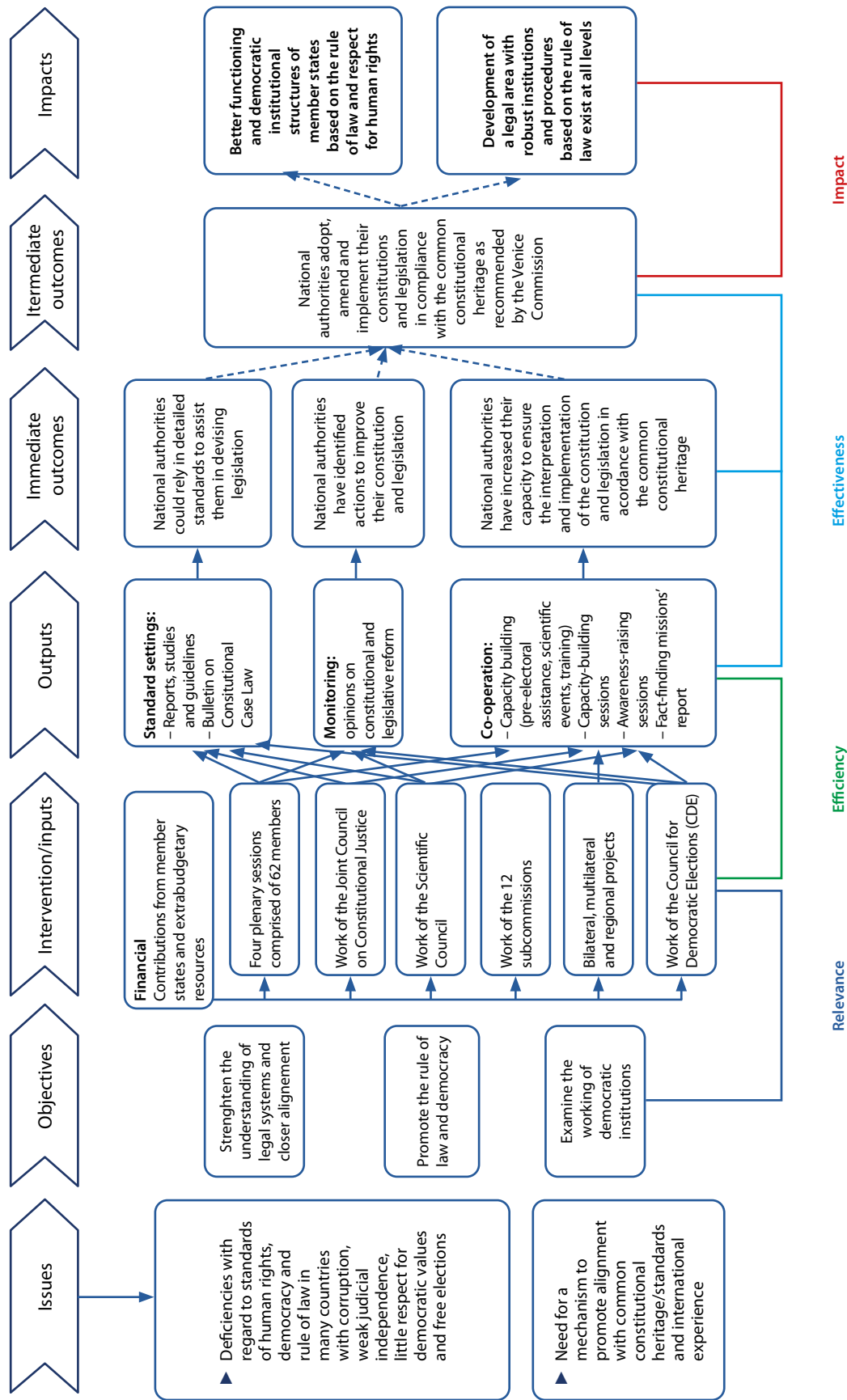
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## **Appendix A: Terms of reference for the Venice Commission evaluation**

Link to the document:

<https://rm.coe.int/eva-venice-commission-appendixa-terms-of-reference/1680a6159c>.

## Appendix B: CSES reconstructed theory of change of the main interventions of the Venice Commission



Source: own elaboration based on Venice Commission documentation review

The below narrative lays out the key elements found in the ToC.

The Venice Commission is seeking to address two main issues, namely: (1) deficiencies in terms of human rights standards, democracy and the rule of law in Europe but more recently also internationally. The Venice Commission is thus concerned with providing assistance to member states who may be facing issues relating to corruption, a weak judicial system and an absence or inadequate level of judicial independence; (2) linked to this, the Venice Commission is also seeking to offer a mechanism for further alignment on common constitutional heritage principles across its member states by promoting shared legal values and practice.

To this end, the Venice Commission has set itself a number of **objectives**, which, as stated in its statute, include strengthening its understanding of the legal systems of its member states, promoting the rule of law and appraising and reviewing the effective workings of democratic institutions in the member states in line with constitutional heritage principles.

The realisation of the above-mentioned objectives is made possible by the financial provisions provided by the Venice Commission's 62 member states as well as additional contributions from individual Council of Europe member states and extra-budgetary resources. These financial contributions allow in turn the Venice Commission to undertake its activities through several organisational structures such as quarterly plenary sessions, 12 sub-commissions, a Scientific Council, etc. A more comprehensive listing of the different components of the Venice Commission's organisational structure is provided in Figure 2.2 under the category **intervention/inputs**.

Subsequently, the inputs of the Venice Commission lead to several **outputs**, which can be categorised in three groups: standard setting, monitoring and co-operation. Standard-setting outputs comprise of reports, studies and guidelines as well as the Bulletin on Constitutional Case-Law. Opinions constitute the main output under the monitoring efforts, whereas co-operation includes capacity-building activities such as pre-electoral assistance, scientific events and training, capacity-building sessions and awareness-raising sessions, and reports from fact-finding missions.

An additional categorisation of the Venice Commission's outputs, not reflected in the graph but relevant for the overall approach of this evaluation, is by thematic content across the core three thematic areas of work of the Venice Commission: (1) democratic institutions and fundamental rights; (2) constitutional justice; and (3) elections, referendums and political parties. For example, opinions and legal standards fall under all three thematic areas depending on the topic they address, whereas constitutional case law would fall under constitutional justice.

According to the ToC, it is then assumed that these outputs will contribute to three main **immediate outcomes**, understood as changes in knowledge, awareness and access to resources on the part of the intervention's beneficiaries. These are reflected in the increased capacity on the part of member states to improve their constitutions and broader legislation, the ability of national authorities to do so being facilitated by the availability of detailed legal standards, and lastly the sustained spread of common constitutional heritage principles within member states and also across the legal area covered by the Venice Commission.

As **intermediate outcome**, understood as changes expected, national authorities adopt, amend and implement their constitutions and legislation in compliance with the common constitutional heritage as recommended by the Venice Commission.

Ultimately, all of the above elements, including a combination of factors and the work of several actors, are envisaged as contributing to the realisation of two overarching **impacts**: better functioning of democratic institutions in member states and the consolidation of the rule of law and the respect for human rights within member states and across the legal area covered by the Venice Commission, in which robust institutions and procedures based on the rule of law exist at all levels. These constitute the intended longer-term change to which the Venice Commission contributes. Indeed, the end beneficiaries of the Venice Commission's work include the democratic institutions of the member states but also crucially civil society, which will benefit from a myriad of benefits in other areas (for example, economic and societal benefits).

The causal mechanisms underpinning the different chains of events have been represented using arrows. The solid line arrows represent causal relationships where attributability is easier to determine, such as the linkage between bilateral/multilateral/regional projects and enhanced co-operation. On the other hand, dotted arrows represent interlinkages where direct attributability will be more difficult to assess and where a contribution perspective would be more appropriate; for example, the indirect relationship between the increased capacity of member states to rely on detailed legal standards to devise their legislation, the actual adoption, amendment and implementation of constitutions and legislation in line with the Venice Commission recommendations, and the better functioning of their democratic institutions due to the multiplicity of factors at play.



In addition, it is important to note that all the interlinkages found in the ToC will be influenced by a **set of assumptions** embodied by the Venice Commission:

- ▶ The Venice Commission acts as an independent advisory body which provides legal advice to its member states through soft instruments (for example recommendations in the form of opinions) and a co-operative way of working based on constructive dialogue with the parties/member state concerned. This means that the impact of the Venice Commission will be closely dependent on the political will of the member state concerned to co-operate, provide information and ultimately implement change.
- ▶ The actions of the Venice Commission are based on the three main principles of the European constitutional heritage: democracy, human rights and the rule of law. However, its membership and scope of activities have expanded from a Europe-centred, constitutional forum in the early years to a transnational one with members from Asia, North Africa and North and Latin America. This means that the Venice Commission's working methods will be faced with increasing heterogeneity and tested as to whether it is in a position to provide advice taking into account the unique features of the respective cultures and societies it deals with.
- ▶ Successful efforts by the Venice Commission might not always lead to immediate change, as change takes time and different forms beyond the implementation of legal changes at national level. This can include fruitful discussions with national authorities and co-operation in the form of participation in events which slowly transform into legal changes over a longer period of time. The assumption is that continuous, co-operative and constructive dialogue and continuous efforts will materialise into legal change in the long term.
- ▶ The work of the Venice Commission is aimed at benefiting both member states and civil society. In cases where opinions are received reluctantly by the state concerned and/or do not lead to any immediate legal change, benefits to civil society and citizens in the form of defence of their rights and support to their cause are considered as relevant outputs.

## Appendix C: List of interviews

The list of interviewees has been anonymised in line with the Council of Europe data protection rules.

| List of interviews                       |                    |
|--|--------------------|
| Venice Commission Secretariat            | 13 staff members   |
| Venice Commission members                | 19 members         |
| Former Venice Commission members         | 3 members          |
| Council of Europe staff                  | 15 staff members   |
| Permanent Representations                | 3 representatives  |
| National authorities                     | 35 representatives |
| International organisations              | 7 representatives  |
| Academia and civil society organisations | 19 representatives |
| Media                                    | 3 journalists      |

## Appendix D: Case studies

Link to the document:

<https://rm.coe.int/dio-2022-35-vc-report-annexd/1680a654e9>.

## Appendix E: Research tools

Link to the document:

<https://rm.coe.int/eva-venice-commission-appendix-research-tools/1680a6159e>.

## **Appendix F: Analysis of opinions (1990-2021)**

Link to the document:

<https://rm.coe.int/eva-venice-commission-appendixf-analysis-of-opinions/1680a6159f>.

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The European Commission for Democracy through Law (Venice Commission) is an advisory body of the Council of Europe with the objectives to strengthen the understanding of the legal systems of the participating states, with a view to bringing them closer; promote the rule of law and democracy; and examine the problems raised by the working of democratic institutions and their reinforcement and development. The Directorate of Internal Oversight commissioned this independent evaluation of the Venice Commission with the purpose to assess its relevance, effectiveness and efficiency for the period 2016-2020 and evaluate its impact since its establishment in 1990. The evaluation contributes to the decision-making needs of key stakeholders and provides recommendations to contribute to meaningful learning and subsequent innovation and change for the Venice Commission. The evaluation found that the Venice Commission is a highly relevant body of the Council of Europe, but that it requires additional resources to maintain its high standards and quality of work.

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The Council of Europe is the continent's leading human rights organisation. It comprises 46 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.